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## Coronavirus: Management of human resources in employment relationships

The Mozambican parliament passed Law 1/2020 of 31 March to ratify and include the declaration of a state of emergency made in Presidential Decree 11/2020 of 30 March.

The state of emergency will be in force for 30 days from 1 April 2020.

The declaration of a state of emergency imposed a set of limitations on constitutionally enshrined fundamental rights, in particular those relating to engaging in business activity and private initiative, the right to work, and the right to freedom including freedom of movement.

The following provisions contained in the declaration of a state of emergency are examples of the limitations on fundamental rights:

- Home quarantine of 14 days for all citizens who have been in countries seriously affected by COVID-19 or have had direct contact with confirmed cases of COVID-19 – article 3(1)(b);
- Suspension of classes in all public and private schools, from pre-school education up to university education – article 3(1)(c);
- Ban on holding private events, such as religious worship, and cultural, recreational, sporting, political, associative, tourism activities of any kind – article 3(1)(d);

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- Limitation on internal movement of people anywhere in the country, provided there is an exponential increase in cases of infection – article 3(2)(a);
- Imposed confinement of people in their homes or in an appropriate establishment for reasons of prevention – article 3(2)(b);
- Imposed internment of people in a healthcare establishment for therapeutic purposes – article 3(2)(c);
- Closure of commercial establishments for entertainment and similar activities, or a reduction in their activity and operation – article 3(2)(a) in conjunction with article 14 of Decree 12/2020 of 2 April).

As is obvious, this limitation on fundamental rights has a direct impact on the employer / employee relationship.

It is necessary to implement urgent exceptional measures that are necessary, appropriate and proportionate to the situation, to prevent the spread of the COVID-19 pandemic, to safeguard human life and public health, and to ensure the functioning of services. Decree 12/2020 of 2 April was approved to put these measures into place and make them operational, and it came into force on the date of its publication (2 April 2020).

The detail of the impact on employment relationships will come from a combination of the existing employment legislation and Decree 12/2020 of 2 April in the part that deals specifically with these relationships.

**1. Working from home**

Article 17(3) of Decree 12/2020 of 2 April provides that “*Actual physical attendance at the workplace is reduced to a number not exceeding 1/3, with a rotation of the teams on duty every 15 days*”. Therefore, depending on the employee’s role in the company, the employment relationship may allow the introduction of remote (home) working for the employee to continue to do their job from another location, preferably their home.

The employment legislation has not yet established rules on working remotely, but Decree 12/2020 of 2 April gives power to the employer to define how its employees will work from home. This is a legal relationship under private law that is governed by the principle of private autonomy and freedom of contract. Therefore, despite some limitations, the employer and the employee are free to agree and set rules on how home working will function.

Article 6(2) of Decree-Law 12/2020 of 2 April establishes that employees in the circumstances listed in article 6(1)(a), (b) and (c) have priority in being allowed to work remotely. These include, in particular, pregnant women, employees aged 60 and over, and employees with diseases considered to be of risk in accordance with the guidelines of the health authorities.

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In the agreement reached between the employer and the employee, it is important to comply with the mandatory rules in the employment legislation and to respect the inalienable rights of the employee. If not, any such agreements will be invalid and the usual consequences will follow.

Employees in these circumstances will be complying with their principal obligation, that is, doing the work they were employed to do, but from home. Therefore, their employers must also keep their part of the agreement and pay the employees' salaries regularly in accordance with what was contractually established.

However, there are jobs which, by definition, cannot be done remotely. Employers will have to continue to pay their salaries during the period of absence agreed between both sides. They will also have to monitor the situation of their employees, the progress of the pandemic, and the measures imposed by the authorities. Employers will then have to arrange for their employees to return as soon as they can meet the conditions for this purpose and the conditions under the agreed rotation. This is because, although it is not to be confused with release from work, the absence will be based on the rules on justified absences previously authorised by the employer.

**2. Suspension of the contract for reasons relating to the employee**

Any absences by an employee who has a positive COVID-19 diagnosis, or has children and/or minors in their care with COVID-19, are considered justified under article 103(d) and (e) of the Employment Law, and imply the non-payment of any remuneration by the employer (article 105(3) of the Employment Law).

However, under article 17 of the Compulsory Social Security Regulations ("CSSR") approved by Decree 51/2017 of 9 October "*The worker has the right to the sickness benefit and hospitalisation allowance.*" However, the benefit is not generally paid to workers who are certified sick until they have been unable to work for three days – article 20(1) of the CSSR. However, in cases of contagious disease, such as COVID-19, the benefit is paid without the requirement for the waiting period – article 20(b) of the CSSR.

The sickness benefit is paid for up to a maximum of 365 consecutive days – article 22(1) of the CSSR.

In cases in which the worker is temporarily unable to work due to COVID-19 and this situation lasts for more than fifteen days or becomes definitive, or if it expected to last for more than 15 days – in which case the suspension starts before the end of the 15 days – the parties can suspend the contract for reasons relating to the worker.

During the period of suspension of the contract, the rights, duties and guarantees of the parties inherent to actually working cease. However, the duties of loyalty and mutual respect remain in place (article 122(4) of the EL). As already mentioned, the absences justified by reason of COVID-19 are not paid by the employer

**3. Suspension of the contract for reasons relating to the employer**

If the limitation imposed by the declaration of a state of emergency affects the normal activity of the employer, it may suspend employment contracts and, to do so, it simply has to comply with the formalities and do the acts required by the applicable rules.

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**"The termination of legal employment relationships based on the absence of workers from the place of work as a result of the measures to prevent and control COVID-19 is prohibited."**

Any suspension of an employment contract has a maximum duration of 3 (three) months. After this, if the reasons for the suspension persist, the obligation to pay the salary comes to an end. This implies the termination of the employment contract and the obligation to compensate the employee.

It should be noted that during the 3 months of the suspension, the employee is entitled to 75%, 50% and 25% of their pay in the first, second and third months respectively. In any event, this pay must not be below the national minimum wage (article 123(5) of the Employment Law).

#### **4. Termination of the contract by reason of the state of emergency**

Taking into account that a state of emergency has already been declared, if the employer sees fit and can justify the step objectively, it can terminate the employment relationships with some employees, although compensation will be payable. The grounds for any such termination are structural, technological or market reasons, and if it is essential for the competitiveness, economic restructuring, or administrative or productive reorganisation of the company.

For both these measures, the employer must follow the process and the formalities imposed for the termination of the contract with notice with either the trade union, the works council, or a representative union association, and the ministry responsible for the area of employment.

However, Decree 12/2020 of 2 April (article 28(1)) establishes that *"The termination of legal employment relationships based on the absence of workers from the place of work as a result of the measures to prevent and control COVID-19 is prohibited."* In other words, it is possible for the employer to terminate an employment contract provided the reason is not the absence of the worker from the place of work due to the prevention and control measures imposed in respect of COVID-19. However, this does not apply to cases in which the employment contract expires during the period the employee is absent. In this case, the employment relationship has actually ceased. ■