



EMPLOYMENT AND LABOUR

Coronavirus: Employment support measures

Following the renewal of the state of emergency, Decree 3-A/2021 of 14 January of the Presidency of the Council of Ministers, determines the closure of various types of establishments. In this context, the employment support measures were amended by Decree-Law 6-C/2021 of 15 January and Decree-Law 6-E/2021 of 15 January, which we summarised below.

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1. Framework

At the beginning of the pandemic, the Scheme for Granting Support to Workers and Companies Affected by the COVID-19 Pandemic was created under Decree-Law No. 10-G/2020 of 26 March¹. This scheme essentially provided for what is known as the simplified layoff.

Subsequently, the Extraordinary Support for the Progressive Resumption of Activity in Companies in Situations of Business Crisis (“Progressive Resumption Support”) was created and approved by Decree-Law 46-A/2020 of 30 July, and it is expected to be in force until 31 December 2020².

Provision was also made for the Employment Support and Extraordinary Incentive for Normalisation of Business Activity scheme, which was approved by Decree-Law 27-B/2020 of 19 June (“Support for Normalisation”)³.

A temporary reduction in normal working hours or a suspension of the employment contract due to the employer are also in force. These are provided for in articles 298 et seq. of the Labour Code and are normally referred to as a layoff.

2. The simplified layoff

The possibility of using this support in the event of the total or partial closure of the business or establishment by a legislative or administrative decision is maintained. The law provides that businesses covered by Progressive Resumption Support may give up that support in order to begin a simplified layoff.

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Under this scheme, workers are entitled to 100% of their regular salary up to three times the RMMG (minimum guaranteed monthly wage) and the amount is paid in full by Social Security 4. In addition, employers are entitled to a full exemption from paying the social security contributions regarding employees and members of statutory bodies while the layoff is in force.

3. Layoffs after 1 January 2021

If companies are unable to make use of the simplified layoff because they do not meet the conditions, they can make use of the layoff scheme provided for in the Labour Code. In this case, if the process begins after 01 January 2021 and is justified by reasons arising from the COVID-19 pandemic, the remuneration due to workers and the social security support will be the same as those provided for the simplified lay-off.

¹ The scheme was subject to Rectification Declaration 14/2020 of March 28 and amended by Decree-Law 14-F/2020 of April 13, Decree-Law 27-B/2020 of June 19 and Decree-Law 6-C/2021 of January 15.

² This legislation was amended by Decree-Law 90/2020 of 19 October, Decree-Law 101-A/2020 of 27 November and Decree-Law 6-C/2021 of 15 January.

³ This scheme was amended by Decree-Law 37/2020 of 15 July, Decree-Law 58-A/2020 of 14 August, Decree-Law 98/2020 of 18 November.

4. Progressive Resumption Support

This scheme applies to companies in a business crisis situation, which is defined as a fall in turnover of 25% or more, ensuring the possibility of a temporary reduction in normal working hours (NWH) for all or some of their employees, as follows:

"This scheme applies to companies in a business crisis situation, which is defined as a fall in turnover of 25% or more."

FALL OF TURNOVER	REDUCTION IN NWH	PAY FOR THE HOURS WORKED	COMPENSATION FOR THE HOURS NOT WORKED	SOCIAL SECURITY CONTRIBUTION
= or > 25%	Up to 33%			
= or > 40%	Up to 40%			70% of the compensation for the hours not worked*
= or > 60%	Up to 75%	100%	80%*	
= or > 75%	Up to 100% until April			100% of the compensation for the hours not worked*
	Up to 75% until June			35% of the pay for the hours worked

* The amount is increased by the amount necessary to ensure the normal gross remuneration up to a maximum of three times the RMMG and the difference is paid by the Social Security.

This support is now also applicable to members of statutory bodies with management role and the limit on the reduction in NWH is the one applicable to the employees. Any employer considered to be a micro, small or medium sized company is also entitled to a 50% reduction in the payment of contributions for the employees covered. This scheme was in force until 31 December 2020 and is now extended until 30 June 2021.

In the case of micro-companies with a 25% reduction in turnover that have benefited from simplified layoff support or Progressive Resumption Support, as an alternative to maintaining the latter, the new legislation creates a simplified support of two RMMGs (minimum guaranteed monthly wages) per worker covered by those supports and this is paid in a phased manner over six months.

Finally, the prohibition on terminating employment contracts by collective dismissal, dismissal for individual redundancy, or dismissal for inadequacy during the reduction and in the following 60 days, as well as the payment of dividends, in any form, remains in place.

"This law does not establish any impediment to subsequent recourse to the simplified layoff."

5. Support for Normalisation

No change is made to the Support for Normalisation scheme. This support was provided for employers who had previously benefited from the support provided for in Decree-Law 10-G/2020 of 26 March. It consisted of one of two forms: one RMMG (minimum guaranteed monthly wage) per worker covered by the measures, paid in one lump sum, or two RMMGs per worker covered, paid in an instalment over six months. Once one had benefited from this support it would not have access to the Progressive Resumption Support. Nonetheless, it was possible to withdraw from the former by 31 December 2020 in order to have access to the latter. However, Decree-Law 8-B/2021 of 22 January 2021 – which establishes a set of support measures for the suspension of teaching and non-teaching activities – introduces a significant change to the Progressive Resumption Support scheme and how it ties in with any prior recourse to Support for Normalisation. The Decree-Law establishes that these two schemes are mutually exclusive until January 2021. Thus, these support measures may be sequential, provided the Progressive Resumption Support is applied for from February 2021.

These rules made it impossible to resort to the layoff provided for in the Employment Code within 60 days of the support being granted. However, this law does not establish any impediment to subsequent recourse to the simplified layoff.

6. Succession of schemes

We summarise below the possibility of obtaining new support after receiving previous support.

PREVIOUS SUPPORT	NEW SUPPORT	LEGAL POSSIBILITY
Simplified layoff	Layoff	Yes
Simplified layoff	Support for progressive return	Yes
Support for progressive return	Layoff	Yes
Support for progressive return	Simplified layoff	Yes
Support for normalisation	Layoff	After 60 days
Support for normalisation	Simplified layoff	Yes
Support for normalisation	Support for progressive return	From February 2021