

New rules on reduction of working hours and salaries and suspension of employment agreements

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This article summarises the practical impact of Law 14,020/2020 (enacted on 6 July 2020) and Decree 10,422/2020 (enacted on 14 July 2020) on Provisional Measure (PM) 936 and employers. The new rules became effective on the day on which they were enacted.

Individual agreements for reductions or suspensions

When can employers negotiate individual agreements to reduce working hours and wages or suspend employment contracts?

As a rule, the conditions provided for by Law 14,020/20 must be agreed by collective agreement, but exceptions allow negotiation by individual written agreement. The below table summarises the rules for entering into an individual agreement.

Conditions	Individual written agreement
25% reduction	Any employee
50% or 70% reduction or suspension of employment agreement – employers whose gross revenue in 2019 was greater than R4.8 million	<ul style="list-style-type: none"> • Employees' whose monthly salary is equal to or lower than R2,090 • Employees' whose monthly salary is equal to or exceeds R12,202.12 and who have a university degree
50% or 70% reduction or suspension of employment agreement – employers whose gross revenue in 2019 was equal to or lower than R4.8 million	<ul style="list-style-type: none"> • Employees' whose monthly salary is equal to or lower than R3,135 • Employees whose monthly salary is equal to or exceeds R12,202.12 and who have a university degree
Reduction or suspension with no financial impact for employees (considering the sum of the reduced salary, the emergency benefit and the monthly indemnification allowance)	Any employee

Pregnant employees

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What happens to contracts with pregnant employees who are subject to a salary and working hours reduction or are suspended once they have given birth and their maternity leave begins?

As soon as an employee gives birth, or their maternity leave begins, employers must report such event to the Ministry of Economy. The payment of the emergency benefit will be interrupted and the payment of the maternity benefit will begin.

The same rules apply to adoptive parents.

How will the maternity benefit be calculated?

The maternity benefit will be calculated based on the last compensation payment on which the employee made contributions to the social security agency before the reduction or suspension of their employment agreement.

Are pregnant employees, who are already eligible for temporary protection against termination because of their pregnancy, entitled to temporary job tenure under Law 14,020/20?

Yes, pregnant employees are entitled to temporary protection against termination resulting from the reduction or suspension of their employment agreement. The protection against termination period resulting from the reduction of a pregnant employee's working hours and salary or the suspension of their employment agreement will begin at the end of the temporary job tenure period provided for pregnant employees, which is five months after birth. Thus, pregnant employees will enjoy both periods of protection against termination consecutively.

Retired employees

Can individual agreements be negotiated to reduce working hours and salaries or suspend employment agreements with employees with active employment agreements who are also legally retired?

Yes, but there are a few conditions.

As retired employees receive continuous social security benefits (retirement), they are not eligible to receive the emergency benefit.

An individual agreement to reduce a retired employee's working hours and salary or suspend their employment contract can be entered into only if:

- the requirements for the execution of an individual agreement (see above) are met; and
- the monthly indemnification allowance is, at least, equivalent to the emergency benefit that the employee would receive.

In addition, employers whose gross revenue was greater than R4.8 million in 2019, besides the amount of the emergency benefit, must pay 30% of the employee's salary as monthly indemnification allowance.

Prior notice

Can employers cancel a previously communicated termination notice and apply measures provided for by Law 14,020/20?

Yes, if the employee so agrees, the prior notice may be cancelled and the measures of the emergency programme (ie, a reduction of working hours and salary or a suspension of the employment agreement) may be applied.

Payroll loans

What do payroll loan discounts look like during working hour and salary reductions or the suspension of employment contracts?

Law 14,020/20 guarantees the renegotiation of the conditions of payroll loan contracts for employees who:

- have had their working hours and salaries reduced;
- have had their employment agreement suspended; and
- are confirmed, by a medical report and test examination, to have COVID-19.

Employees who fulfil these conditions are guaranteed a reduction in loan instalments in the same proportion as the salary reduction, with a grace period of up to 90 days.

Deadlines under Decree 10,422/2020

Can employers extend working hour and salary reductions and suspension of

employment agreement periods?

Yes, per the summary below.

Adopted measures	Deadline limits
Working hour and salary reduction	120 days – 90 days provided for by Law 14,020/20 plus 30 days provided for by Decree 10,422/20
Suspension of employment agreement	120 days – 60 days provided for by Law 14,020/20 plus 60 days provided for by Decree 10,422/20
Working hour and salary reduction and suspension of employment agreement	120 days for both measures together – 90 days provided for by Law 14,020/20 plus 30 days provided for by Decree 10,422/20

Decree 10,422/2020 also determines that the reduction and suspension period applicable until 14 July 2020 will be considered for the purposes of the maximum limits established. Thus, companies that had already reduced or suspended employment agreements when PM 936/2020 was enacted must deduct such periods from the 120-day total now authorised.

Disabled employees***If employers must make lay-offs, can they lay off disabled employees without replacements?***

No, Law 14,020/2020 determines that until the state of public calamity ends on 31 December 2020, disabled employees cannot be dismissed without cause. Even when a replacement is hired, this exemption is not authorised.

However, the law does not prohibit the termination of employment agreements due to:

- the employee's resignation;
- dismissal with cause by the employer; or
- termination by mutual agreement.

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