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SOCIEDADE DE ADVOGADOS, SP, RL

Covid-19: Government Measures - Labour - Update (Private Sector)

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It was published the Decree No. 4/2021, dated of March 13th, regulating the state of emergency declared by the President of the Republic due to a public calamity situation

The measures provided in this Decree came into force on March15th, 2021 and will last until March 31st, 2021 with the aim of containing the transmission of the virus and reducing the expansion of the pandemic disease COVID-19.

It is listed below the main measures published.

1. Teleworking and time-shifted organization

- The adoption of the teleworking regime is mandatory, regardless of the employment relationship, the modality, or the nature of the legal relationship, whenever it is compatible with the activity performed and the worker has the conditions to exercise it, without the need of agreement between the parties.
- The teleworker has the same rights and duties as the other workers, without any reduction in pay, under the terms of the Labour Code or applicable collective regulation instrument, namely with regard to the limits of the normal working period and other working conditions, safety and health at work and compensation for damages arising from work accidents or occupational diseases, while also maintaining the right to receive the meal allowance that was already attributed.
- The employer must provide the work and communication equipment necessary for teleworking.
- When such availability is not possible and the worker consents to it, teleworking can be carried out through the means that the worker possesses, with the employer being responsible for the proper programming and adaptation to the needs inherent to the provision of teleworking.
- The company that uses or ultimately benefits from the services provided is responsible for ensuring compliance with the provisions of the preceding points, with the necessary adaptations, to temporary workers and service providers that are providing activities for these entities.
- The functions are not considered to be compatible with the activity performed in telework, namely in the following cases:
    a) Workers who provide face-to-face assistance in public services;
    b) Workers directly involved in the Portuguese Presidency of the Council of the European Union;
    c) Workers for whom this is determined by the members of the Government responsible for the respective services, under the respective power of management.
- Whenever it is not possible to adopt the teleworking regime, regardless of the number of workers, the employer must organize the hours of entry and exit from the workplaces in a delayed manner, as well as adopt the technical and organizational measures that ensure the physical distance and protection of workers, applying, with the necessary adaptations, the provisions of articles 3 (concerning the organization of shifted work hours) and 4 (concerning the change of working hours) of Decree-Law No. 79 -A/2020, of October 1st, in its current wording.

Exception: The obligation to telework is not applicable to the following:

a. workers of essential services provided for in article 10, no. 1 of Decree-Law No. 10-A/2020, of 13/03 (i.e., health professionals, security and rescue forces and services, including voluntary firemen, and the armed forces, workers of essential public services and of institutions or social equipment to support the elderly such as homes, day centres and other similar, management and maintenance of essential infrastructures);
b. workers listed in article 2(4) of Decree-Law No. 79-A/2020 of 01/10 (i.e., workers in pre-school educational establishments of institutions in the social and solidarity sector that are part of the national pre-school education network regulated by Decree-Law No. 147/97 of June 11th, and educational and training offerings, both primary and secondary, provided in private and cooperative educational establishments of a non-higher level, including private professional schools).

2. Use of masks or visors

- The use of masks or visors is mandatory to access or stay in workplaces that maintain the respective activity under the terms of the referred decree whenever the physical distance recommended by the health authorities proves to be impracticable.
- The obligation provided for in the preceding paragraph shall not apply to workers when they are performing their work in an office, room or equivalent that has no other occupants or when impermeable physical barriers of separation and protection are used between workers.
- To the situations foreseen in the previous points is applicable, with the necessary adaptations, the provisions of Article 13-B of Decree-Law No. 10-A/2020, of March 13th, in its current wording.

3. Body temperature control

- In cases where the respective activity is maintained under the terms of the referred decree, body temperature measurements may be taken by non-invasive means, in the control of access to the workplace, to public services or institutions, to educational, teaching and vocational training establishments, to commercial, cultural or sporting spaces, to means of transport, to health establishments, to prisons or educational centres, as well as in residential structures.
- Access to the above mentioned places may be prevented whenever the person:
    a) Refuses to measure body temperature;
    b) Presents a result higher than the normal body temperature, considering as such a body temperature equal to or higher than 38ºC, as defined by the General Directorate of Health (DGS). In this case, the impossibility of a worker to access the respective workplace is considered justified absence.
- This does not prejudice the right to individual data protection, and it is expressly forbidden to record the body temperature associated with the person's identity, unless expressly authorized by the person.
- Measurements may be carried out by a worker at the service of the entity in charge of the site or establishment (the latter being subject to professional secrecy), always using equipment suitable for this purpose, which may not contain any memory or make records of the measurements made, and no physical contact with the person concerned is admissible.

4. Closure of facilities and establishments

The facilities and establishments referred to in Annex I hereunto are closed, without prejudice of a member of the Government responsible for the economic area, with the faculty of delegation, to:

a) allow the opening of some facilities or establishments referred to in **Annex I** hereunto or the exercise of other retail trade activities or the provision of services that may prove to be essential with the evolution of the economic situation;
b) impose the exercise of some of the activities of retail trade or provision of services, if they prove to be essential to ensure the regular supply of essential goods to the population;
c) limit or suspend the exercise of retail trade activities or the provision of services, if the exercise thereof proves to be dispensable or undesirable in the context of combating contagion and spread of the virus.

5. Suspension of activities of facilities and establishments

The activities of retail trade and rendering of services in establishments open to the public, or on an itinerant basis, are suspended, with the exception of those that make available goods of first necessity or other goods considered essential or that render services of first necessity or other services considered essential in the present conjuncture, which are listed in **Annex II** hereunto. This without prejudice of a member of the Government responsible for the economic area, with the faculty of delegation, to:

a) allow the opening of some facilities or establishments referred to in **Annex II** to this decree or the exercise of other retail trade or service activities that may prove to be essential as the situation evolves;
b) impose the exercise of some of the activities of retail trade or of rendering of services, in case they prove to be essential to ensure the regular supply of essential goods to the population;
c) limit or suspend the exercise of retail trade activities or the provision of services, if the exercise thereof proves to be dispensable or undesirable in the context of combating contagion and spread of the virus.

The suspension determined in accordance with the preceding paragraph shall not apply to:

a) Wholesale establishments;
b) Establishments that intend to maintain their activity exclusively for the purpose of home delivery or availability of goods at the door of the establishment, at the wicket or through a service of collection of products previously acquired through means of remote communication (click and collect), provided they have an autonomous and independent entrance from the outside. In this case, access to the interior of the establishment by the public is prohibited.

6. The following activities are now allowed (as per the indicated in Annex II)

a) hairdressing salons, barbers, beauty salons and similar establishments, by appointment,
b) b) establishments for the sale of books and musical supports, of the establishments for the sale of automobiles and cycles, and of real estate brokerage services.

7. Closing hours

- The activities of non-food retail and service provision in establishments allowed to function close at 09:00 p.m. on weekdays and at 01:00 p.m. on Saturdays, Sundays and public holidays.
- Food retail trade activities close at 9:00 p.m. on weekdays and at 7:00 p.m. on Saturdays, Sundays and public holidays.

8. Prohibition of advertising of commercial practices with price reduction

Advertising, advertising activity or the adoption of any other form of commercial communication is prohibited, namely in information society services, which may result in an increase in the flow of people attending establishments that are open to the public, namely through disclosure of balances, promotions or sales.

9. Exercise of retail trade activity in Wholesale Establishments

- During the period of application of the referred decree, the holders of the operation of wholesale food distribution establishments are allowed to sell their products directly to the public, cumulatively exercising the activity of retail trade.
- The owners of the operation of food distribution wholesaling establishments that intend to exercise retail trade activity under the terms of the preceding paragraph are obliged to comply with the rules of access, occupation, safety, hygiene and priority care provided for in the referred Decree and summarized in point 10 below.
- Goods intended for retail sale must display their respective retail price, ensuring their availability for purchase in unitary form.
- Holders of wholesale food distribution establishments where retail sales are made shall adopt, if necessary, measures to ensure that the quantities made available to each consumer are adequate and dissuasive of situations of hoarding.

10. General provisions applicable to establishments or places open to the public

In establishments that maintain their activity under the terms of the decree in question, the following rules must be observed.

Rules of occupation, permanence, and physical distance

a) The allocation of spaces accessible to the public must observe the maximum indicative occupancy rule of 0.05 people per square meter of area, with the exception of service establishments;
b) The adoption of measures that ensure a minimum distance of 2sqm between people, except special provision or orientation of the DGS in a different direction;
c) The guarantee that people remain within the space only for the time strictly necessary;
d) The prohibition of waiting situations for service provision inside the establishments, with the economic operators having to resort, preferably, to prior appointment mechanisms;
e) The definition, whenever possible, of specific entry and exit circuits in establishments and facilities, using separate doors;
f) The observance of other rules defined by the DGS;
g) The encouragement of the adoption of codes of conduct approved for certain sectors of activity or establishments, as long as they do not contradict the provisions of this decree.

For the purposes of paragraph a) of the previous item:

a) "Area" means the area intended for the public, including areas for collective use or circulation, with the exception of areas reserved for parking vehicles;
b) The maximum occupancy limits per person do not include employees and service providers who are performing functions in the spaces in question.

Managers, managers or owners of spaces and establishments shall make every effort to:

a) Carry out a balanced management of public access, in compliance with the provisions of the previous paragraphs;
b) Monitor refusals of public access, in order to avoid the concentration of people at the entrance of spaces or establishments.

Hygiene Rules:

a) The provision of the service and the transport of products must be carried out in compliance with the hygiene rules defined by the DGS;
b) Economic operators must promote the daily and periodic cleaning and disinfection of spaces, equipment, objects and surfaces with which there is intense contact;
c) Economic operators must promote the cleaning and disinfection, before and after each use or interaction by the client, of the automatic payment terminals (TPA), equipment, objects, surfaces, products and utensils in direct contact with the clients;
d) Economic operators should promote the containment, as much as possible, by workers or customers, of touching products or equipment as well as unpackaged items, which should preferably be handled and dispensed with by workers;
e) In the event of exchanges, returns or take-back of used products, operators shall, whenever possible, ensure their cleaning and disinfection before they are made available for sale again, unless this is not possible or compromises the quality of the products;
f) Other rules defined in codes of conduct approved for certain sectors of activity or establishments, as long as they do not contradict the provisions of this decree.

- Without prejudice to the previous points, **retail or service establishments** should seek to ensure the availability of skin disinfectant solutions, for workers and customers, at all entrances and exits of the establishments, as well as inside them, in suitable locations for disinfection according to the organization of each space.
- **Priority Attendance Rules**: The establishments of retail trade or service rendering must attend with priority the health professionals, the elements of the forces and services of security and the organs of criminal police, protection and rescue, the personnel of the Armed Forces and of rendering of social support services, without prejudice of the application of the dispositions of the Decree-Law No. 58/2016, of August 29th, in its current wording.
- **Provision of Information to customers**: Establishments of retail trade or service provision must inform customers, clearly and visibly, regarding the rules of maximum occupancy, operation, access, priority, care, hygiene, safety and other relevant applicable to each establishment.
- **Closure rules for cleaning**: Retail or service establishments may close at certain times of the day to ensure cleaning and disinfection operations of employees, products or space.
- **Rules on the sale and consumption of alcoholic beverages**: the sale of alcoholic beverages is prohibited in service areas or at petrol stations and, from 8:00 p.m. to 06:00 a.m.. Closure rules for cleaning: Retail or service establishments may close at certain times of the day to ensure cleaning and disinfection operations of employees, products or space.
- In home deliveries, directly or through an intermediary, as well as in the modality of sale through the provision of meals or packaged products at the door of the establishment or at the wicket (take-away), it is not allowed to provide alcoholic beverages from 8:00 p.m..
- The consumption of alcoholic beverages in open air spaces with public access and public roads is prohibited.

11. Restaurants and Similar

- Catering and similar establishments, regardless of the sales or service area, operate exclusively for the purpose of confectionery activity intended for consumption outside the establishment through home delivery, directly or through an intermediary, as well as for the provision of meals or packaged products at the door of the establishment or at wicket (take-away).
- Catering and similar establishments that intend to maintain their activity, in whole or in part, for the purpose of confectionery intended for off-premises consumption or home delivery, directly or through an intermediary, as well as for the provision of packed meals or products at the establishment's door or at the take-away wicket, are exempt from license for confectionery intended for off-premises consumption or home delivery and may determine to their employees, provided that with their consent, participation in the respective activities, even if they do not form part of the object of the respective employment contracts.
- Within the scope of providing meals, packaged products or drinks at the door of the establishment or at the wicket (take away), the consumption of meals, products or drinks at the door of the establishment or in its surroundings is prohibited.
- Restaurants located in commercial establishments operate exclusively for the purpose of cooking for consumption outside the establishment through home delivery, directly or through an intermediary, and the provision of meals or products at the door of the establishment or at the wicket is prohibited.

12. Retail establishments that sell various types of goods

The member of the Government responsible for the economic area may, by order, determine that retail establishments that trade more than one type of goods and whose activity is permitted under this decree may not trade in goods typically traded in retail establishments closed or with the activity suspended under this decree.

13. Events

- **Celebrations and other events are forbidden, with the exception of** religious ceremonies, including community celebrations.
- In duly justified situations, the members of the Government responsible for the areas of internal administration and health may jointly authorize other celebrations or events, defining the respective terms.

14. Prohibition of circulation between municipalities

The circulation between municipalities is prohibited on the weekend of March 20th and 21st , 2021, and, daily as from March 26th, 2021.

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TFRA shall update the referred information whenever necessary.
Finally, we would like to highlight that the information contained in this document is of a generic nature and, therefore, does not exempt the analysis of the specific case, nor the consultation of the official documentation and legislation in force at each moment.

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