



Confederação Nacional da Indústria

PELO FUTURO DA INDÚSTRIA

NOTE - PROVISIONAL MEASURE (MP) 927/2020 - LABOR MEASURES TO ADDRESS THE STATE OF PUBLIC CALAMITY RESULTING FROM THE CORONAVIRUS (COVID-19) EPIDEMIC

What it is: Provisional Measure (MP) 927/2020.

Focus: Provides for **labor measures to address the state of public calamity** resulting from the coronavirus (covid-19) crisis.

Effectiveness and review period: MP 927/2020 entered into force on the date of its publication (March 22) and will be submitted to the National Congress **for its review by May 20** (60 days), which period may be automatically extended for a further 60 days.

Updated with
information available
until 9:00 a.m. on March
24, 2020

Some of the main points or the MP: during the state of public calamity, MP 927/2020 (i) allows for individual written agreements to be entered into to preserve jobs, which shall prevail over laws and collective bargaining standards; (ii) facilitates the adoption of telecommuting arrangements; (iii) allows for individual vacations to be moved up; (iv) allows for more flexibility for granting collective vacations; (v) allows for holidays to be enjoyed and moved up; (vi) increases the compensation period of the hour bank; (vii) suspends health examinations and training requirements linked to the Regulating Standards (NRs) (occupational safety and health); (viii) suspends the requirement of contributing to the Government Severance Indemnity Fund for Employees (FGTS) in March, April, and May 2020; (ix) allows for the employing company to decide to extend collective bargaining agreements and accords.

Preliminary assessment: **MP 927/2020 is a positive measure** and makes it possible for companies to make some **necessary adjustments with the aim of preserving their sustainability and jobs during this period of public calamity** more swiftly and simply.

However, MP 927/2020 has controversial points and has been criticized by the Public Prosecutor's Office for Labor Affairs Labor and by Anamatra through notes.

Therefore, **it is important that companies assess, on a case-by-case basis, the instruments to be adopted** at this moment considering their specific cases and peculiarities, based not only on the labor provisions contained in MP 927/2020, but also on preexisting ones.

Summary of the main measures

During the state of public calamity (Legislative Decree No. 6/2020) resulting from the coronavirus, MP 927/2020 **allows for labor measures to be adopted by employers for the purpose of preserving jobs and income during the period.**

In addition, it defines the period of public calamity as a hypothesis of **force majeure** as provided for in the Consolidated Labor Laws (CLT, article 501).



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The MP also provides for other labor rules to remain effective during the state of public calamity. Some of its main ones include:

Prevalence of individual written agreements over other instruments (article 2 of the MP)

Employees and employers may enter into individual written agreements for the purpose of ensuring employment bonds and these agreements shall prevail over normative, legal, and bargaining instruments, subject to constitutional limits.

Telecommuting (articles 4 and 5)

At least **48 hours** in advance (through **written or electronic** means), **employers** may **determine the adoption of telecommuting**, remote work, or distance work arrangements (including for interns and apprentices) and the return of employees to the face-to-face regime without a prior contract and regardless of individual or collective bargaining agreements.

This type of work must be **carried out predominantly or fully outside the company's premises**, using communication technologies (provided that it does not constitute external work - article 62, I, of the CLT), **except for the obligation to record working hours**, according to article 62, III of the CLT.

A written contract signed beforehand or within 30 days after this type of work arrangement is adopted must provide for the responsibilities for acquiring, maintaining, or supplying the equipment and infrastructure required to carry it out. This contract must provide for the reimbursement of expenses borne by the employee.

The work **can be performed using the employee's equipment or the employer may provide it on a lending basis** (free of charge¹) **and pay for infrastructure services** (not characterized as part of the wages to be paid). If the equipment cannot be made available on a

RULES FOR TELECOMMUTING BEFORE THE STATE OF CALAMITY (article 75-A and the following ones of the Consolidated Labor Laws [CLT], still in force)

For purposes of comparison, the main rules for telecommuting provided for in the Consolidated Labor Laws (CLT) that were altered by MP 927/2020 especially **for the period of public calamity** are the following ones:

- it was mandatory that telecommuting arrangements were expressly provided for in the employment contract, specifying the activities to be carried out.
- changing from the face-to-face regime to that of telecommuting depended on mutual consent and required an amendment in the employment contract. The return from telecommuting arrangements to the face-to-face regime involved a minimum transition period of 15 days.
- as a general rule, a written contract had to be entered into to provide for the responsibilities for acquiring equipment and infrastructure, as well as for reimbursing expenses borne by employees.

¹ Article 579 and following articles of the Civil Code.



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lending basis, the employee's regular working hours shall be considered as time at the disposal of the employer (article 4 of the CLT).

The time an employee spends using applications and communication software outside his or her regular working hours shall not be considered time at the disposal of the employer nor on-call time, unless this possibility is provided for in an individual or collective bargaining agreement.

The provisions applied to telecommuting workers shall not apply to call-center and telemarketing workers.

Individual vacations (articles 6-10 of the MP)

Individual vacations, including before the completion of the entitlement period, **may be moved up by the employer**, provided that:

- this decision is **notified 48 hours in advance**, in writing or electronically;
- the vacation **periods are at least 5 days long**.

Employees and employers may move up future vacation periods by individual written agreement.

Vacation pay during this period may be paid **until the 5th business day of the month following** the vacation.

The **conversion of 1/3** of the vacation period into a **cash bonus** shall be subject to the **employer's agreement**.

The 1/3 constitutional additional pay for vacations granted during the state of public calamity, as well as the cash bonus, **may in turn be paid until the final date for paying the 13th salary (Christmas bonus)** (December 20, see Law 4,749/1965).

RULES FOR INDIVIDUAL VACATIONS BEFORE THE STATE OF CALAMITY (article 134 and following articles of the CLT)

For purposes of comparison, the main rules for individual vacations provided for in the Consolidated Labor Laws (CLT) that were altered by MP 927/2020 especially **for the period of public calamity** are the following ones:

- vacations must be granted within 12 months after an employee was hired (entitlement period);
- only if the employee agrees, vacations may be divided into up to 3 periods, one of which must not be less than 14 days and the other ones must not be less than 5 days;
- the beginning of the vacation period must be communicated at least 30 days in advance;
- vacation remuneration, including the 1/3 additional pay provided for in the Constitution, must be paid up to 2 days before the vacation period starts;
- employees may freely choose to convert 1/3 of their vacation period into a cash bonus.

Employees falling under the **coronavirus (covid-19) risk group** must be given **priority for enjoying individual or collective vacations**.

Collective vacations (articles 11 and 12 of the MP)

Collective vacations (for all employees of a company, establishment, or sector) may be granted **by a unilateral act of the employer**. For this purpose, the employer must **notify all the employees** at least **48 hours before** the vacation period starts.



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The restrictions of granting at most two collective vacation periods per year, each of which of no less than ten days (article 139 of the CLT), shall not apply.

Previous communication to the local body of the Ministry of Economy and to professional trade unions, as provided for in article 139 of the CLT, shall not be required.

RULES FOR COLLECTIVE VACATION BEFORE THE STATE OF CALAMITY (article 134 and following articles of the CLT)

For purposes of comparison, the main rules for collective vacations provided for in the Consolidated Labor Laws (CLT) that were altered by MP 927/2020 especially **for the period of public calamity** are the following ones:

- collective vacations may be enjoyed in up to 2 annual periods, each of which of no less than 10 days;
- the local authority of the Ministry of Economy, the Trade Union, and the employees who will be granted collective vacations must be notified at least 15 days in advance;

Hour Bank (article 14 of the MP)

Employers may interrupt activities and establish a special regime for compensation of working hours under a formal individual agreement or collective agreement for compensation within up to 18 months after the end of the state of public calamity.

The period may be compensated by extending working hours by up to two hours (not exceeding ten hours a day). This compensation shall be determined by the employer, regardless of any individual or collective agreement or accord,

Suspension of health examinations and training linked to the Regulating Standards (NRs) for occupational safety and health (articles 15 and 16 of the MP)

The obligation to carry out occupational, clinical, and complementary medical examinations is suspended, as well as any periodic and eventual training provided for in Regulating Standards (NRs).

Examinations for dismissal of workers shall be carried out as usual. However, they may be waived if the last occupational examination was performed less than 180 days before.

Medical examinations must be carried out within 60 days from the end of the state of public calamity and the physician in charge of coordinating the occupational health program may indicate the need for carrying it out if he/she considers that extending the examination period poses a risk to the health of workers.

Training must be provided within 90 days after the end of the state of public calamity, but it may, however, be provided in the distance learning modality.



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Coronavirus (Covid-19) has not been classified as an occupational disease (article 29 of the MP)

Contamination by the coronavirus (Covid-19) shall not be considered as occupational contamination unless it is proven that the contamination occurred through a causal link with work.

Suspension of contributions to the Government Severance Indemnity Fund for Employees (FGTS) (articles 19-25)

The requirement of paying contributions to the FGTS in March, April, and May 2020 has been suspended. These contributions may be paid, without fines and any other charges, in up to 6 installments (as of the 7th of each month from July 2020). For this purpose, employers must declare the respective obligations by June 20, 2020 (Law 8,032/1991, caput of article 32, and Decree 3,048/1990), which shall constitute a declaration and recognition of credits and characterize a confession of debt.

Maintenance of existing CIPAs (article 17 of the MP)

Internal Accident Prevention Committees (CIPAS) may be maintained until the end of the state of calamity. Electoral processes already underway may be suspended.

Deadlines for submitting administrative labor defense arguments and appeals (article 28 of the MP)

Procedural deadlines for submitting administrative labor defense arguments and appeals for labor infractions and FGTS debit notifications are suspended for 180 days from the date of entry into force of the MP.

Extension of collective bargaining agreements and accords (article 30 of the MP)

At the discretion of employers, collective bargaining agreements and accords that have expired or will expire within 180 days the date of entry into force of the MP may be extended for 90 days from the previous deadline.

Guiding inspection (article 31 of the MP)

Within 180 days from the date of entry into force of the MP, the labor tax audit department shall carry out guiding inspections, except in the case of:

- lack of employee registration, based on complaints;



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- situations of serious and imminent risk, only for irregularities immediately related to characterizing the situation;
- occurrence of a fatal occupational accident determined by means of a tax-related procedure for analyzing an accident, only for irregularities immediately related to the causes of the accident; and
- work under conditions similar to slave or child labor.

Validation of labor measures already adopted by employers (article 36 of the MP)

All labor measures adopted by employers in the 30 days before the date of entry into force of the MP shall be validated, provided that they do not contravene the provisions of MP 927/2020.

Extension of the applicability of the MP (article 32)

The provisions of the MP also apply to employment relationships governed by:

- Law No. 6,019/1974 (temporary work and outsourcing of services);
- Law No. 5,889/1973 (rural work);
- as appropriate, provisions on working hours, hour bank and vacations, domestic work (Complementary Law [LC] 150/2015).

Important: MP 928/2020 revoked article 18 of MP 927/2020 (which provided for the possibility of suspending work for qualification purposes under an individual agreement)

MP 928/2020, published on March 23, 2020, revoked article 18 of MP 927/2020. This article provided for the possibility of suspending an employment contract for 4 months **under an individual agreement with an employee or group of employees** for participation in a professional qualification course or program in the distance learning modality **offered by the employer.**



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Lay-off (article 476-A of the CLT)

Lay-off, as provided for in article 476-A of the CLT, contemplates the following main rules:

- an employment contract may be suspended for a period of 2 to 5 months for an employee to participate in a professional qualification program, **provided that it is contemplated in a collective bargaining accord or agreement and there is formal acquiescence by the employee;**
- after lay-off is authorized in a collective bargaining agreement or convention, the trade union must be informed of the contractual suspension of the employee or employees at least 15 days in advance;
- an employment contract may not be suspended more than once in a period of 16 months;
- during the suspension period, the employee must take part in a professional qualification course or program offered by the employer, **the duration of which must be equivalent to that of the contractual suspension.** In addition, employees shall be entitled to benefits voluntarily granted by the employer.
- during the period of suspension of the qualification contract, workers shall be entitled to a **professional qualification grant borne by the Workers' Support Fund (FAT) (article 2-A of Law 7,988/1990);**
- employers may grant employees a monthly compensation allowance, which shall not be of the nature of wages, during the period of contractual suspension, the amount of which shall be defined in a collective bargaining accord or agreement;
- the five-month suspension period may be extended under a collective bargaining agreement or accord, provided that the employer bears the qualification grant during that period.