

COVID-19 and Labour Law: Brazil

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Abstract

Social distancing rules in Brazil in response to the COVID-19 pandemic, resulted in the paralysis of most economic activities. Measures were taken to provide support for maintenance of income and employment and to guarantee a minimum income for informal workers. Health and safety protections for healthcare and essential services workers received very minimal attention.

Keywords: Covid-19; Labour Law; Income preservation benefit; Job stability; Minimum income.

On February 6, 2020, Federal Law #13,979 declared the Covid-19 pandemic a public health emergency, allowing provinces to determine social isolation and quarantine rules¹. In addition, legislative Decree #6, from March 3rd, 2020, declared a state of public calamity, which allows the government to exceed its budgets under the Fiscal Responsibility Law². All provinces have closed schools/universities and allowed only for essential services to continue to operate³. Any absence from work due to health emergency measures are considered to be justified under Law #13,979.

Social isolation has resulted in disruption of business operations in both formal and informal economies, increasing unemployment. In order to counteract these effects, the government has adopted three Provincial Decrees (PDs) for formal workers: #927, March 22, 2020⁴; #936, April 1, 2020⁵, and #946, April 7, 2020⁶. All these decrees also cover domestic employees where applicable.

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¹ Available at: < <http://www.in.gov.br/en/web/dou/-/lei-n-13.979-de-6-de-fevereiro-de-2020-242078735>>. The Law is regulated by the Ministry of Health Decree Portaria # 356, from March 11, 2020. Available at: < <http://www.in.gov.br/en/web/dou/-/portaria-n-356-de-11-de-marco-de-2020-247538346>>

² Available at: < <https://legis.senado.leg.br/norma/31993957>>.

³ Essential services are defined by Decrees 10,282, from March 20, 2020, and 10,288, from March 22, 2020. Provisional Decree (PD) #926, from March 20, 2020, allows the movement of workers in essential public services and private activities.

⁴ Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv927.htm.

⁵ Available at: < http://www.planalto.gov.br/CCIVIL_03/_Ato2019-2022/2020/Mpv/mpv936.htm>.

⁶-Available at:< <http://www.in.gov.br/en/web/dou/-/medida-provisoria-n-946-de-7-de-abril-de-2020-251562794>>.

PD #927 allows changes in the labour contract through individual negotiation concerning: adoption of teleworking⁷; anticipation of individual vacations and holidays; concession of collective vacations; compensation of hours; and deferral of payment of the employers' contribution for the Severance Pay Fund – FGTS. PD #946 allows workers to withdraw from their FGTS a lumpsum amount of US\$200.50. The goal of these changes is to reduce the burden on companies and to facilitate teleworking during social distancing rules.

There are no specific protections for health and safety of healthcare workers⁸. On the contrary, PD #927 allows for employers to interrupt the vacation of these workers and to extend their working hours.

PD #936 complements the previous decree, establishing the payment of an Emergency Employment and Income Preservation Benefit - EEIPB; allowing a proportional reduction of working hours and wages for a maximum period of 90 days; and a temporary suspension of the employment contract for a maximum period of 60 days (which can be divided in two periods of 30 days). The EEIPB will be paid by the Federal Government to employees whose work hours have been reduced or their contract suspended. In these cases, the employer can supplement EEIPB payments with a monthly amount that is legally not a wage⁹. The receipt of EEIPB payments will not reduce unemployment benefits in the future. The hours can be reduced by 25%, 50% or 75%¹⁰. The EEIPB payments are calculated on the same basis as the unemployment insurance.

In the case of suspension of the employment contract, the employee is entitled to all the benefits conceded by the employer, such as, private medical insurance and contributions to social security. Workers who have their hours and wages reduced or their employment contract suspended have job stability guaranteed for the period of the reduction or suspension and, for an equal period beyond.

Under PD#936, the reduction of hours and wages can be negotiated directly between employer and workers in two cases: when the worker's monthly wage is below US\$617 or above US\$2,403. The employment contract can be suspended by individual negotiation, if the employer's gross revenue exceeds US\$945,000. These rules were considered unconstitutional by the Supreme Court in a provisional decision on 6 April 2020. The Court argued that PD936 violates the constitutional rule that establishes irreducibility of

⁷ In the public sector, worker with sixty years old or more; immunodeficient or with chronic or severe pre-existing diseases; and responsible for the care of one or more people with suspected or confirmed diagnosis of COVID-19 infection, provided there is cohabitation; pregnant or lactating are allowed to teleworking (Instrução Normativa 21, March 16, 2020).

⁸ In March 27, 2020, the Ministry of Economy issue a general orientation for workers and employers due to the Covid-19 pandemic. Available at: < http://www.previc.gov.br/regulacao/normas/oficio-circular/2020/sei_19962-100067_2020_55-pdf-pdf.pdf/view>.

⁹ Employers that earned, in 2019, gross revenue exceeding US\$945,000, can only suspend the employment contract of its employees by paying monthly compensatory aid in the amount of thirty percent of the employee's wage, during the period of suspension.

¹⁰ PD #936 allows different percentages of hours and wage reduction through collective bargaining, but in this case the amount of the EEIPB will be inferior than if adopted the percentages already established by the decree.

wages, except through collective bargaining (Federal Constitution, Article 7o, Line VI). According to the Court: “uncertainties of the moment lived cannot allow the uncritical adoption of any measures that promise to keep jobs, even if well intentioned, above all, if they hurt - as they do seem to do – the constitutional and legal status of the country”¹¹.

Informal workers are not covered by these decrees, even though they constitute more than 45% of the labour force. To address this gap, Law #13,982, April 2, 2020, provides benefits of roughly USD118 per month for three months, to informal low-income workers¹².

Up to two persons per family can receive the benefit. The cumulative requirements are: a) to be a worker over eighteen years old; b) not have a formal job; c) not receive a social security or any other federal benefit, or unemployment insurance or a federal income transfer program benefit, with the exception of *bolsa familia*¹³; d) a family income per capita of up to half the minimum wage¹⁴ or total monthly family income of up to three minimum wages; e) not having received, in 2018, taxable income above R\$ 28,559.70; and e) work as an individual microentrepreneur (MEI), or an individual contributor to the General Social Security System, or who is an informal worker.

Informal workers might be employed, self-employed or unemployed, intermittently employed, domestic workers, and be registered in the Single Registry for Social Programs of the Federal Government (CadÚnico) or who meet the requirement described in (d) above through self-declaration.

The expectation is that around 59.2 million individuals are eligible for the benefit. Around 80% of those eligible are already registered: 30% of whom are beneficiaries of the *bolsa familia* and the remainder are registered in the CadÚnico¹⁵. For the workers who are not in any of these registers, a digital platform (CAIXA | Auxílio Emergencial) is provided for self-declaration mentioned above.

These decrees provide for a fairly comprehensive coverage of all workers, formal and informal, even though the amount of support provided can be debated and social dialogue is being ignored in favour of individual bilateral bargaining. A glaring gap is the lack of safety and health protections for workers in essential services including healthcare.

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¹¹Supremo Tribunal Federal. ADI 6363.

Available at: < <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=440927>.

¹² This period may be extended by a Federal Government act.

¹³ Low-income family support.

¹⁴ Minimum wage in Brazil is around US\$206.

¹⁵ Souza et al. Estimativas de público elegível e custos do benefício emergencial criado pelo PL 9.236/2017. IPEA, Nota Técnica 60, Março 2020.

Available at:

< https://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=35416&Itemid=9>.