

How your company should act in light of the flexibility granted employer obligations proposed in provisional measure (MP) 927

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As we had earlier informed, on March 22nd the Federal Government published Provisional Measure No. 927/20 ("MP 927"), which proposes a series of alternatives for the granting of flexibility to employer obligations to minimize the impact of the coronavirus pandemic for companies and, consequently, preserve employment, which are:

- (i) Home office extended to all employees, including interns and apprentices, given that they are provided prior notice of 48 (forty eight) hours relative to the same. The provision of the necessary and adequate technological equipment and infrastructure shall be established by written contract or by electronic means, signed in advance or within 30 (thirty) days counting from the date of the change to the employment regime;
- (ii) Individual vacation time to be taken in advance, which should be communicated to the employee at least 48 (forty eight) hours in advance, in writing or electronically, the granting of vacation time of a time period of less than 05 (five) concurrent days not being possible. The granting of vacation time should prioritize such employees as are of the at risk group and, relative to vacation pay, (a) payment of the remuneration at least one third higher than the normal salary ("1/3 Constitutional") shall be made by December 20th; (b) the payment of

the vacation *per se* shall be made by the 5th (fifth) business day of the month subsequent to when the vacation time is taken;

- (iii) Collective vacation time, which should be communicated to the entirety of the affected employees at least 48 (forty eight) hours in advance, in writing or electronically, prior notice to the local representative office of the Ministry of the Economy and the communication to the professional category-representative unions being dispensed with, the maximum of 02 (two) annual time periods and the minimum limited of 10 (ten) concurrent days for each time period being respected;
- (iv) Vacation time being taken in advance means the granting of federal, state, district and municipal holidays that are not religious in nature, with payment due subject to work performed on their respective dates. With respect to the logistics of implementing said vacation time, the entirety of the affected employees must receive communication of the same least 48 (forty eight) hours in advance, express indication of the vacation time being taken in advance being necessary. With respect to religious holidays, these can only be taken in advance via the express concordance of the employer, with

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- the consequent execution of the written individual agreement;
- (v) Banking of hours, which consists of the constitution of a special compensation regime under which the employee interrupts its activities and this time period is accounted in terms of negative hours to be compensated within 18 (eighteen) months counting from the date of the state of public calamity is deemed over. Banking of hours shall be agreed upon via individual or collective agreement and the compensation of hours to recuperate the interrupted time period shall be made by increasing the work day by up to 02 (two) work hours, without exceeding the limit of 10 (ten) work hours per day, independent of collective bargaining agreement or individual or collective agreement;
- (vi) Suspension of the administrative workplace health and safety requirements, which contemplates the suspension of the requirement of occupational, clinical and complementary medical exams, these exams to be taken within 60 (sixty) days counting from the date of the state of public calamity is deemed over, with exception of the employee dismissal exam. The employee dismissal exam can be dispensed with should the employee have already had taken the occupational medical exam within the last 180 (one hundred and eighty) days. The periodic and random training sessions as are provided for in the workplace health and safety regulation are suspended until when the state of public calamity is deemed over, after which they shall be take place

within a time period of 90 (ninety) days. Such Internal Commission for the Prevention of Accidents –CIPA elections as may be in course shall be suspended; and

- (vii) With respect to Government Fund for Employee Severance – FGTS deposit, the requirement of employer FGTS deposit with respect to March, April and May 2020, with deposit due in April, May and June 2020, respectively, shall be suspended, the same to be made in up to 06 (six) monthly installments, with deposit on the 7th (seventh) day of each month, as of June 2020. In the case of termination of the employment agreement, the FGTS deposits destined the employee should be made immediately.

The President of the Republic has but unofficially made announcement to the present date with respect to the possibility of suspending the employment agreement of a qualified professional for the time period of 04 (four) months, reason for which (fragility) we do not cite above the content of the legal provision to Article 18 of MP 927.

As procedural strategy, we understand it opportune for employers to adopt the measures cited for the reduction of employees in a scaled fashion, according the following order: (i) adopting vacation time being taken in advance; (ii) granting of individual or collective vacation; (iii) the banking of hours, which will allow for the anticipation of the absence of the employees and, as soon as operations return to normal, their compensation.

Additionally, should there exist a good relationship between the company and the Employees` Union before the company

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puts the employee reduction measures into action, we understand that it would be advantageous for the company to attempt to implement said measures via an agreement with the Employees` Union so as to best guarantee juridical certainty, especially in the case that MP 927 is not converted into Law.

Lastly, we believe that the Federal Government will publish a new Provisional Measure in the coming days towards reducing the number of work hours and consequent reducing salary amounts so as to further lessen the economic impact on companies from COVID-19.

We shall continue to closely accompany the changes affecting employment relations and shall update you on the same.

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