

COVID-19: Provisional Measure no. 945 establishes immediate measures for the port sector in the combat against the pandemic

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Upon the World Health Organization (WHO) decree of state of pandemic due to the rapid proliferation of COVID-19 (the infectious disease caused by the new coronavirus), numerous countries suffered immediate impact in the most varied of segments.

In Brazil, red alert was activated with the appearance of the first cases diagnosed and covered in the media in the middle of March, at which time the federal agencies, either individually or together, were obligated to take drastic measures towards mitigating the impact of the pandemic on the economy and public health.

Among these measures we highlight Provisional Measure no. 945, signed by President Jair Bolsonaro and published in the Official Gazette of the Union on April 04, 2020, which establishes the norms to be observed by port agents during the crisis.

The major preoccupation of Provisional Measure No. 945 is the protection of the contract worker – i.e., those who have no employment tie with the port operators – permitting, further, that the ports contract work book employees for storage, block, stevedoring, cargo transport, cargo packaging repair and vessel security, for a maximum time period of 12 (twelve) months, should the contract workers not be able to provide their services, thus avoiding lack of manpower for such services as are considered essential.

According to the Decree, the Agencies Responsible for Labor Management (OGMOS) – non-profit entities responsible for the administration and oversight of port worker scaling of shifts – cannot include in the manpower those contract workers that (i) evidence symptoms compatible with COVID-19; (ii) are diagnosed with COVID-19 or have been submitted to isolation measures for reason of cohabitation with someone diagnosed with the disease; (iii) are gestating or lactating; (iv) are 60 (sixty) years old or more; and (v) are diagnosed with immunodeficiency, respiratory disease, cardiovascular, respiratory or metabolic-related chronic or grave preexistent illness.

From this moment forward, the OGMOS must conduct contract worker hire electronically, in-person interaction being prohibited.

The intention is clearly to avoid agglomerations during the time period of social isolation, according to as oriented by the health authorities.

In the case of removal from the workforce, the contract workers are entitled to indemnification equivalent to 50% (fifty percent) of their average monthly payment, received via the intermediation of the OGMOS, with respect to the time period between October 01, 2019 and March 31, 2020.

Important to point out is that the payment should be made by the port operator or other service contractor having requested contract worker hire via the OGMOS, these

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entities being responsible for calculating, collecting and dispersing said amounts to the respective beneficiaries.

Worthwhile highlighting is that this indemnification cannot be received by any worker the beneficiary of any benefit of the General Social Security Regime or social security itself, or by those who are entitled to beneficial assistance due to their status as contract workers over 60 (sixty) years of age that do not meet the requirements for retirement on the basis of invalidity, age, time within the workforce or special retirement established in Law No. 8.213/91.

Should increased port work costs impact on those leasing agreements already entered into with the port administration, these agreements should be reviewed so as to reestablish economic-financial equilibrium.

Further relative to costs, the Provisional Measure establishes that the port administration shall grant to those operators that are not port installation lessees a discount equivalent to the increased cost resulting from the indemnification payment.

Lastly, special attention should be paid to the fact that the Provisional Measure inserts in its list of essential services those established in Law No. 7.783/89. Thus, the chances of paralyzation of the rendering of services of this nature are extremely reduced, protecting the transport of pandemic combat supplies.

Even though the crisis is far from over, it appears that Provisional Measure No. 945 was a step in the right direction by the Federal Government in the combat against COVID-19 in that, undoubtedly, such measures have immediate – and positive – impact on the port sector.

This being said, the tendency is that emergency measures do not stop here as should the proliferation of the pandemic continue advancing exponentially new measures to be taken will be shown to be necessary.

Members of the firm Almeida Advogados include a team specialized in Maritime and Port Law that is accompanying the measures that are being announced on a daily basis and is at your disposal to answer any questions with respect to the content of this article.

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