



Provisional Measures No. 1,045/2021 and No. 1,046/2021 aim to preserve employment and employees' income amid the COVID-19 pandemic

On April 28, 2021, the Brazilian Federal Government issued two new Executive Orders (known as Provisional Measures - MP), No. 1,045/2021 and No. 1,046/2021, which aim to preserve employment and employees' income during the COVID-19 pandemic that continues in Brazil. The measures established in both new MPs may be adopted for 120 days counted from April 28, 2021. Below are the main topics addressed by the new regulation.

I. MP No. 1,045/2021

MP No. 1,045/2021 regulates the new emergency program for the maintenance of employment and employees' income (New Program). In summary, it reestablishes the possibility of the employers to (i) reduce salary and working hours, and (ii) suspend employment agreements, which are alternatives that were in force last year in view of MP No. 936/2020 and Law No. 14,020/2000. As last year, employees that are affected by such measures are entitled to receive an emergency benefit (Benefit) on a monthly basis paid by the Federal Government.

Here is a chart with the main information of the New Program:

NEW EMERGENCY PROGRAM FOR THE MAINTENANCE OF EMPLOYMENT AND EMPLOYEES' INCOME – MP No. 1,045/2021

Alternatives	How to implement	Monthly salary/condition	Option	Emergency Benefit paid by the Government
Reduction of salary and working hours: Up to 120 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Employees with monthly salary of up to BRL 3,300	Salary/working hours reduction of 25%, 50% or 70%	25%, 50% or 70% of the unemployment insurance amount
		When as a result of the individual agreement, the employee will continue to receive the same monthly remuneration considering the following amounts: (i) reduced salary + (ii) emergency benefit + (iii) monthly allowance paid by the employer		
		"Hipersuficiente" employees		
	Employees not included in the alternatives above	Salary/working hours reduction of 25%	25% of the unemployment insurance amount	
Collective negotiation (collective bargaining agreement negotiated with the union)	All employees regardless their monthly salaries	Any salary/working hours reduction different than the ones above	(i) Reduction of less than 25%: there is no right to the Benefit; (ii) Reduction between 25% and 49%: 25% of the unemployment insurance amount (iii) Reduction between 50% and 69%: 50% of the unemployment insurance amount (iv) Reduction above 70%: 70% of the unemployment insurance amount	
Temporary suspension of employment agreements: Up to 120 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Employees with monthly salary of up to BRL 3,300		(i) companies with gross revenue of up to BRL 4.8 million in 2019: 100% of the unemployment insurance amount (ii) companies with gross revenue in 2019 higher than BRL 4.8 million: 70% of the unemployment insurance amount. In this situation, the company must also pay to the employee a monthly allowance at least equal to 30% of the employee's salary
		When as a result of the individual agreement, the employee will continue to receive the same monthly remuneration considering the following: (i) emergency benefit + (ii) monthly allowance paid by the employer		
	"Hipersuficiente" employees			
Collective negotiation (collective bargaining agreement negotiated with the union)	Different salary ranges than the one above			

Notes:

- **“Hipersuficiente” employees:** employees that have university degree and salary currently equal or higher than BRL 12,867.14.
- **Unemployment insurance:** the current maximum amount of the unemployment insurance is BRL 1,911.84.
- **Information to the Ministry of Economy and unions:** companies must inform the Ministry of Economy and the employees' union in within 10 days counted as of the execution of the agreements. If after the execution of the individual agreement a collective bargaining agreement is negotiated, the most beneficial clauses to the employees will prevail.
- **Monthly allowance:** the monthly allowance to be paid by the employer does not have salary nature (i.e., it is not subject to labor and social security charges). The monthly allowance is optional in all alternatives above, except in the suspension of the employment agreement by companies with gross revenue in 2019 higher than BRL 4.8 million.
- **Benefits:** employees affected by the measures will continue to be entitled to the benefits granted by the employer.
- **Employees' job stability:** during the period of the salary reduction or temporary suspension of employment agreement and an equal period thereafter.
- **Pregnant employees:** the job stability period will only start counting after the end of the job stability period already guaranteed to pregnant employees by our Federal Constitution. Hence, after the end of the period of 5 months after the baby delivery, pregnant employees that were affected by the measures will still be entitled to the job stability period of MP No. 1,045/2021.
- **Retired employees:** employees who are already retired in accordance with the Brazilian rules and receive the retirement benefit from the Government, but continue to have an active employment agreement, are ineligible to receive the Emergency Benefit. However, the employer may still adopt both measures for them through an individual written agreement if, in addition to the requirements mentioned in the items above for authorization of the execution of an individual written agreement, the employer pays a monthly allowance with the following conditions: (a) the amount of the monthly allowance must be at least equivalent to the amount of the Emergency Benefit that the employee would receive if he/she were not retired; (b) for employers with a gross revenue higher than BRL 4.8 million in 2019, the amount of the monthly allowance must be at least equal to the sum of the amount mentioned in the previous item (a) and the amount equivalent to 30% of the employee's salary.
- **Termination without cause:** if performed during the employees' job stability period, it will result in the payment of the mandatory severance + an additional indemnification established by MP No. 1,045/2021, which varies in accordance with the type of measure adopted.
- It is possible to adopt both alternatives (reduction of salary + temporary suspension of employment agreement) for the same employee if the limit of 120 days is observed.

II. MP No. 1046/2021

MP No. 1,046/2021 also reestablishes several measures that were in force last year linked to MP No. 927/2020. The main measures are:

- i. deferred payment of FGTS deposits from April to July 2021. The FGTS deposits of such months may be paid in 4 installments as of September 2021 without interest, monetary adjustment and penalties;
- ii. flexibility in the adoption of teleworking system;
- iii. possibility to grant collective and individual vacation periods by notifying employees with a 2-day prior notice;
- iv. possibility to perform the vacation payment until the 5th day of the following month of the beginning of the vacation period and to perform the payment of the 1/3 vacation bonus until December 20th;
- v. anticipation of vacation periods, even future and unvested periods;
- vi. anticipation of holidays and possibility to include them in a system to offset working hours (bank of hours);
- vii. possibility to implement a bank of hours system that will allow offset of hours (positive and negative hours) in up to an 18-month period counted after a period of 120 days. The bank of hours system does not need to be negotiated with the union; and
- viii. possibility to delay some health and safety procedures, including occupational medical exams.

Both Executive Orders are effective since their publication date for a period of 60 days and may be extended once for an equal period.

We are available to discuss these measures and to assist with the implementation of the alternatives that best suit your company.



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