

► INTRODUCTION - EMERGENCY EMPLOYMENT AND INCOME MAINTENANCE PROGRAM

To preserve the income and employment of Brazilians during the COVID-19 pandemic, the Federal Government created the Emergency Employment and Income Maintenance Program. This program, provided for in the Provisional Measure (MP) No. 936/2020 and later converted into Law No. 14.020/2020, stated the possibility for the employer to reduce the working hours and the salary of employees as well as to temporarily suspend their employment agreement. In return, workers receive the Emergency Employment and Income Preservation Benefit (BEm), which is based on the monthly average amount of Unemployment Insurance.

It is important to highlight that these measures are transitional and they are only valid until December 31, 2020, which is the duration of the state of public calamity decreed by the National Congress - optional and depending on agreement between employer and employee.

► SUSPENSION OF EMPLOYMENT AGREEMENT

1. What is the legislation that deals with the suspension of the employment contract during the pandemic?

The suspension of the employment agreement originated from Provisional Measure No. 936/2020, which was later converted into Law No. 14.020, published in the Federal Official Gazette on July 7, 2020.

2. Does the suspension agreement also apply to domestic workers?

Yes, it does. The law applies to all formal workers in Brazil, including domestic workers, apprentices, and part-time workers. With the exception of employees that work for the Federal Union, the states and the Federal District, the municipalities, the organs of the direct and indirect public administration, the public companies and the mixed economy companies and the so-called public servants.

3. Can any company temporarily suspend the employment agreement of its employees?

Yes, it can. However, companies with gross income above BRL 4.8 million in the calendar year 2019 are expected to maintain the payment of 30% of its employees' remuneration, who will also receive the 70% from the emergency benefit.

4. Can the company apply the suspension of the employment agreement to all its employees?

Yes, it can. In accordance with the text of the new Law No. 14.020/2020, the employer may agree to temporarily suspend the employment agreement of its employees in a sectoral, departmental, and partial way or of all the jobs.

5. How can the temporary suspension of the employment agreement be negotiated?

The suspension of the employment agreement may be negotiated by collective labour agreement (CLA), collective agreement or individual written agreement between employer and employee.

6. Under what circumstances can the temporary suspension of the agreement be implemented by individual agreement?

Temporary suspension of the employment agreement can be established by individual agreement in the following cases:

- a. If the employer had gross income greater than BRL 4.8 million in the calendar year 2019, he may apply the suspension of the contract through an individual agreement with employees whose salary is equal to or less than BRL 2,090.00 (two thousand and ninety reais).
- b. If the employer had gross income greater than BRL 4.8 million in the calendar year 2019, he may apply the suspension of the contract through an individual agreement with employees whose salary is equal to or less than BRL 3,135.00 (three thousand, one hundred and thirty-five reais).
- c. If the employee has higher education qualifications and receives a monthly salary equal to or greater than two (2) times the maximum limit of the benefits of the Social Security General Regime.
- d. Whenever the agreement does not decrease the total amount received monthly by the employee, including the Emergency Employment and Income Preservation Benefit and the monthly compensatory aid for the employer.

7. How about the employees that don't fit in with the circumstances mentioned above?

A collective agreement or collective bargaining agreement is necessary for those who do not fall under the circumstances of question 6.

8. Can the agreement of an employee who is retired be suspended by individual agreement?

It is possible if the employee fits in any of the circumstances foreseen in question 6 and still receives monthly compensatory aid, according to the rules foreseen in the article 12, § 2nd of Law No. 14.020/2020.

9. What formalities must be followed to sign the individual agreement for the suspension of the employment agreement?

For the formalization of the individual agreement for temporary suspension of the employment agreement, the employer must obey the following rules:

- a. The proposed agreement must be made in writing and sent to the employee at least two calendar days in advance.
- b. After the signature of the individual agreement, the employer must communicate the respective union of the professional category within up to ten consecutive days from the date of its execution.
- c. The employer must also inform the Ministry of Economy of the temporary suspension of the employment contract within ten days from the date of the conclusion of the agreement. Effective physical or electronic means can be used to conclude individual written agreements.

10. What happens if after signing the individual agreement there is a collective agreement or collective labour agreement with clauses that conflict with those of the individual agreement?

If there is a collective agreement or collective bargaining agreement after an individual agreement still in force, the following rules must be observed:

- a. The conditions established in the individual agreement must be applied in relation to the period prior to the collective agreement period.

b. As of the entry into force of the collective agreement or the collective bargaining agreement, the conditions stipulated in the collective bargaining shall prevail over the conditions stipulated in the individual agreement when they conflict with it.

c. Whenever the conditions of the individual agreement are more favourable to the worker, they will prevail over the collective bargaining agreement.

11. For how long can the employment agreement be suspended?

Provisional Measure No. 936/2020 provided that the employment agreement could be suspended for a maximum period of 60 days. With the edition of Decrees 10,422 of July 13, 2020 and 10,470 of August 24, 2020, the maximum period for entering into a temporary suspension of the employment agreement was increased. This way, currently the employment contract can be suspended for a maximum period of 180 days. These deadlines may be increased by new decrees to which attention and observance are recommended.

12. Can the suspension of the agreement be done in parts?

Yes, it can. According to Decrees 10.422 and 10.470, the suspension may occur in successive or alternated periods, provided that these periods are equal to or greater than 10 days and that the 180-day period is not exceeded.

13. Should the agreement suspension period used during the MP 936 be considered when considering the new 180-day limit?

Yes, it should for the purposes of counting the maximum limit provided for in Law No. 14.020, the period of temporary suspension of the agreement that have already occurred since the beginning of the emergency program must be taken into consideration.

14. During the term of the temporary suspension of the contract, should the employer continue to pay any amounts?

Yes, they should. The employer must continue to pay the benefits to which the employee was entitled such as medical, dental, school, day care, nanny reimbursement, private pension.

In addition, as stated in question 3 if the employer has declared in the calendar year 2019 gross income greater than BRL 4.8 million, they must pay monthly compensatory aid of 30% of the value of the salary of the employee who has the employment agreement suspended during the period of the suspension.

15. During the term of the temporary suspension of the contract, should the employer continue to collect the social security charges arising from the agreement?

No, they should not. However, the employee is authorized to contribute to the General Social Security Regime as an optional policy holder with progressive rates as stated in article 20 of Law No. 14.020.

16. What are the circumstances and the deadline for reinstating the suspended employment contract?

The employment contract will be re-established within two (2) consecutive days from the occurrence of any of the following situations:

- a. End of the state of public calamity
- b. Date established as the end of the agreed suspension period
- c. Date of communication from the employer informing the employee of his decision to bring forward the end of the agreed suspension period.

17. What happens if the employee continues to work during the period of the temporary agreement suspension?

If during the period of temporary suspension of the employment agreement there is breach of agreement and the employee keeps doing his/her work activities, even if partially or through teleworking, remote work or distance work, the temporary suspension of the employment agreement will not be valid and the employer will be subject to immediate payment of remuneration and social and labour charges, as well as for the entire period the penalties provided for in the legislation in force, and the sanctions provided for in a collective agreement or collective labour agreement.

► PROPORTIONAL REDUCTION OF WORKING HOURS AND SALARY

1. How does it work? What is the maximum period allowed for this salary reduction?

By means of an individual written agreement with employees, employers may establish a reduction in working hours with a proportional reduction in salary for up to 180 days (deadline extended by Decrees 10,422 of July 13, 2020 and 10,470 of August 24, 2020 of 25%, 50% or 70%. In addition, a collective agreement or convention may establish other percentages of reduced working hours and salary.

Initially, the reduction in working hours could be up to 90 days, but Decree No. 10.422 added 30 days to this period and Decree 10,470 added another 60 days, in order to complete the total of 180 days.

2. Is it possible to have a proportional reduction in hours and salary of a domestic worker?

Yes, it is. The law applies to all formal workers in Brazil, including domestic workers, apprentices and part-time workers. With the exception of employees that work for

the Federal Union, the states and the Federal District, the municipalities, the organs of the direct and indirect public administration, the public companies and the mixed economy companies and the so-called public servants.

3. How can the proportional reduction in working hours and salary be negotiated?

The suspension of the employment agreement may be negotiated by collective labour agreement (CLA), collective agreement or individual written agreement between employer and employee.

4. Under what circumstances can the proportional reduction in hours and salary be made through an individual agreement?

During the term of Provisional Measure 936 from April 1, 2020 to July 6, 2020, this reduction could be implemented through an individual written agreement in the following cases:

- a. if the salary reduction is 25% for all employees regardless of the salary amount;
- b. if the salary reduction is 50% or 70% for employees:
 - with monthly salary equal to or less than BRL 3,135.00
 - holder of higher education degree with monthly salary equal to or higher than BRL 12,202.12.

With the entry into force of Law No. 14.020 on July 7, 2020, this reduction can be implemented by individual written agreement in the following cases:

- a. for all the employees when the proportional reduction of working hours and salary does not decrease the total amount received monthly by the employee, including the BEm, the monthly compensatory aid and the salary paid by the employer due to the hours worked;
- b. if the salary reduction is 25% for all employees regardless of the salary amount.
- c. if the salary reduction is 50% or 70% for employees with:
 - salary equal to or less than BRL 2,090.00, if the employer has declared in the calendar year of 2019, gross income greater than BRL 4.8 million.
 - salary equal to or less than BRL 3,135.00, if the employer has declared in the calendar year of 2019, gross income greater than BRL 4.8 million.
 - holder of higher education degree with monthly salary equal to or higher than BRL 12,202.12.

5. How about the employees that don't fit in with the circumstances mentioned above?

The reduction for employees not covered by the circumstances mentioned in the previous question can only be established by collective agreement or by collective labour agreement.

In addition, a collective agreement or convention may establish percentages of reduced working hours and salary different from those provided for (25%, 50% and 70%). However, the BEm value will be:

- a. 0 (zero) in case of reduced working hours and salary below 25%;

- b. 25% of the amount corresponding to unemployment insurance in case of reduced working hours and salary greater than 25% and less than 50%;
- c. 50% of the amount corresponding to unemployment insurance in case of reduced working hours and salary greater than 50% and less than 70%;
- d. 70% of the amount corresponding to unemployment insurance in case of reduced working hours and salary equal or greater than 70%.

6. How is the employee's situation with a reduced salary?

The BEm program will complement part of the wage losses that employees will have due to the reduction of their working hours. The BEm value is based on the calculation of the monthly unemployment insurance amount that the employee is entitled to, plus the reduction percentage applied on the calculation basis.

See the updated table below with the unemployment insurance payment amounts:

Average Salary Ranges	Average Salary	Calculation
Up to	BRL 1,599.61	The average salary is multiplied by 0.8 = (80%)
From Up to	BRL 1,599.62 BRL 2,666.29	The average salary that exceeds BRL 1,599.61 is multiplied by 0.5 (50%) adding it up to BRL 1,279.69.
Above	BRL 2,666.29	The instalment value will invariably be BRL 1,813.03

For example, if the employee's monthly salary is BRL 3,000.00 and the reduction in working hours and salary is 25%, the employer will pay 75% of BRL 3,000.00 = BRL 2,250.00 Besides that, the employee will receive BEm from the Government in the amount of 25% of BRL 1,813.03 = BRL 453.26. Thus, the monthly total that the worker will receive is BRL 2,703.26 (salary of BRL 2,250.00 plus BEm of BRL 453.26).

In this case, the employee's monthly salary loss will be BRL 296.74 (BRL 3,000.00 - BRL 2,703.26 = BRL 296.74).

It is important to remember that the proportional reduction in working hours and salary must maintain the value of the hourly wage.

7. What formalities must be followed to sign the individual agreement for proportional reduction of hours and salary?

For the formalization of the individual agreement the employer must obey the following rules:

- a.** the proposed agreement must be made in writing and sent to the employee at least two calendar days in advance;
- b.** the employer must also inform the Ministry of Economy of the proportional reduction of hours and salary within 10 days, starting from the date of conclusion of the agreement;
- c.** the employer must inform the respective union of the professional category within up to 10 calendar days, starting from the date of the conclusion of the agreement.

The necessary actions may be performed by any effective physical or electronic means.

8. What happens if after signing an individual agreement, a collective agreement or a collective labour agreement is concluded with clauses that conflict with those of the individual agreement?

In the case of a collective agreement or collective bargaining agreement decided after an individual agreement still in force, the following rules must be observed:

- a.** the conditions established in the individual agreement must be applied in relation to the period prior to the collective agreement period;
- b.** as of the entry into force of the collective agreement or the collective bargaining agreement, the conditions stipulated in the collective bargaining shall prevail over the conditions stipulated in the individual agreement when these are in conflict;

c. whenever the conditions of the individual agreement are more favourable to the employee, they must prevail over the collective bargaining agreement.

9. How will working hours and salary be restored?

The working hours and salary will be restored within 2 calendar days starting from:

- a.** The end of the state of public calamity;
- b.** The date established as the end of the reduction period agreed in the agreement;
- c.** From the employer's communication date in anticipation of the end of the reduction period stated in the agreement.

The Emergency Benefit will be paid exclusively while the proportional reduction in working hours and salary lasts.

10. Can the employer reduce salary and hours and then suspend the contract, or vice versa?

Yes, it is possible as long as they do not exceed the total term of 180 days as provided for in the Decree No. 10.422 of July 13, 2020 and the Decree No. 10.470, of 24 August 2020.

11. Can the employer propose a proportional reduction in hours and salary for part of their employees?

Yes, they can. According to the text of the new Law No. 14.020/2020, the employer may agree to proportionally reduce the working hours and salary of its employees in a sectoral, departmental, and partial way or of all the jobs.

12. Can an employee who is retired have a reduction by individual agreement?

It is possible as long as the employee fits in any of the circumstances foreseen in question 4 and still receives monthly compensatory aid, according to the rules foreseen in the article 12, § 2nd of Law No. 14.020/2020.

13. Should the periods of proportional reduction of hours and salary as well as the agreement suspension used during the term of MP 936 be considered when considering the new 180-day limit?

Yes, they should. For counting the maximum limit provided for in Law 14.020, the reduction and suspension period since the beginning of the emergency program must be considered.

► ABOUT BEm

1. What is the BEm payment frequency and how do you count the time for the first receipt?

The BEm is paid each month and is due 30 days from the date of conclusion of the agreement, provided that the employer forwards this information to the Ministry of Economy within 10 days of its conclusion.

If the employer does not meet the information deadline, they are responsible for paying the remuneration usually due to the employee, including the respective social and labour charges until the effective communication date. In this case, the BEm will be calculated based on the communication date, after which the 30 days for the payment of the due instalment will be counted.

2. If dismissed, will the employee who received the BEm be prevented from receiving unemployment insurance?

No, the rules for granting unemployment insurance have not changed, and the grace period must be fulfilled at the time of eventual dismissal.

3. What happens to the worker who receives undue BEm or amounts higher than due?

In this case the employee will be notified to return what he has unduly received within 30 days of the date of receipt of that notification. If the employee fails to do so, they will be registered in the Union's active debt.

4. What prerequisites apply to the employment contract before a reduction or suspension agreement can be proposed?

It is not necessary to comply with any acquisition period if the employment contract has been signed by April 1, 2020 and informed in the eSocial or CNIS by April 2, 2020.

5. Is there any chance that BEm is not due and for this reason an individual agreement cannot be signed?

Yes, there are many. The employer cannot enter into an individual agreement with employees who are not entitled to receive BEm:

- a. who holds a public office or job, or a position on a free appointment and dismissal committee;
- b. who has an elective mandate;
- c. who receives the benefit of continued provision of the General Social Security System or of the Social Security systems such as sickness benefit and maternity pay, with the exception of death benefit and accident benefit;
- d. who receives unemployment insurance in any modality;
- e. who receives a professional qualification scholarship referred to in article 2nd-A of Law No. 7,998 of January 11, 1990.

It should be noted that the retiree will never receive BEm (see questions 8 on suspension and 12 on reduction), although he may eventually express interest in signing an individual reduction or suspension agreement.

6. If the employee has more than one job can they receive more than one BEm?

Yes, employees can receive cumulative BEm, except in the case of an intermittent agreement.

7. How is the BEm of the intermittent worker?

Unlike the BEm received by the other employees, this is automatically granted by the government based on their records, and it is paid in six fixed monthly and successive instalments of BRL 600.00.

Employees can consult their Digital Work Card to check if they have agreements in the intermittent mode, being guaranteed access to the benefit only if celebrated until April 1, 2020 and informed in the eSocial or CNIS until

April 2, 2020. This type of contract is characterized by a lack of continuity, as there are alternating periods of service provision and inactivity.

8. How is the BEm calculated?

The BEm value is based on the calculation of the monthly unemployment insurance amount that the employee is entitled to. The value of unemployment insurance is multiplied by the percentage of reduction in working hours (25%, 50% or 70%), if applicable. See the updated table below with the unemployment insurance payment amounts:

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Above	BRL 2,666.29	The instalment value will invariably be BRL 1,813.03

▶ REPORTING CHANNELS:

General Labour Complaints:
denuncia.sit.trabalho.gov.br

Slave Labour Complaints:
ipe.sit.trabalho.gov.br