

A blue-tinted background featuring a microscopic view of several COVID-19 virus particles. The particles are spherical with prominent, thin, hair-like spikes extending from their surfaces. They are scattered across the frame, with some appearing larger and more detailed than others. The overall aesthetic is clean and professional, with a focus on the scientific nature of the subject.

COVID-19 AND ITS

LABOR IMPACTS

A GUIDE TO BUSINESS CONDUCT

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L.O. BAPTISTA

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LABOR IMPACTS

Attentive to the needs of our clients, the Labor team of L.O. Baptista Advogados listed below the most relevant aspects related to the impacts caused by Covid-19 on the business environment, as well as some suggestions for measures to confront the pandemic.

The arrival of Coronavirus in Brazil has had a significant impact on the economy and on interpersonal relations, affecting the professional environment as **companies began to adopt strategic actions to prevent and contain the risks caused by the disease.**

In order to face the situation, the Brazilian authorities and the Government have been publishing several recommendations through online portals, social networks, regulations (such as Law 13.979/2020 and Ordinance 356/2020 and Provisional Measures 927/20 and 936/20) and opinions, such as the Joint Technical Note No. 02/2020 of the Public Labor Ministry.

GENERAL RECOMMENDATIONS

IN THE WORKING ENVIRONMENT

It is the right of employees and the duty of companies to reduce the risks in the working environment, considering health, hygiene and safety standards. To avoid future problems, it is important, especially, that the employer be attentive to the recommendations made available by health agencies, in order to encourage and propagate the worker's protection measures.

Some general recommendations that may be followed to keep the working environment healthy and responsible are:

- **Change the work routine:** Implement home office and preventive leave of employees. In addition to it, encourage the use of alternative means of communication (conference calls or videoconferencing) and prevent employees from participating in events, seminars and business trips also curbs the proliferation of Coronavirus. However, it should be emphasized that the employer may not influence the employee's private life, preventing him/her from traveling or attending a certain location, for example.
- **Reinforce the cleaning, sanitization and ventilation of the professional environment:** In order to prevent the spread of the virus, it is important that the working environment is always clean and ventilated. Thus, increasing the sanitization of all working equipment, such as chairs, tables, telephones, keyboards and computers, becomes essential.

- **Promote the worker's awareness:** As a prevention policy, the companies may create promotion programs, lectures and support material with good practices, methods of identifying the main symptoms of Coronavirus and guidelines on the forms of transmission and care that should be adopted by all. For that, the companies may use both official information from the World Health Organization and the Ministry of Health, and recommendations produced by occupational health and medicine professionals.
- **Provide prevention materials and reorganize the working environment:** As far as possible, it is necessary to reorganize the environment to increase the distance between people (the recommendation is 1 to 2 meters), leave visual awareness materials scattered around the workplace and provide sanitizers (alcohol 70% or other appropriate for the activity), disposable tissues and other materials to contain the disease.
- **Create an emergency committee to deal with Coronavirus issues:** Effective, this emergency management system may only involve internal employees or bodies such as CIPA and SESMT, and it is responsible for implementing the adaptations in the working environment, as well as the awareness campaigns promoted by the company. In addition, this body, preferably made up of people from various departments, may enable the contingency plans recommended by the authorities.

The suggestions above corroborate the social function of the company and also protect the health of the employee exposed to the infection, avoid the contamination of other workers and safeguard the company from any attempt to take responsibility for the employee infected in the working environment. In addition, the more contamination is avoided, the less the company will be burdened with the payment of employees who are on leave due to medical recommendation.

ALTERNATIVE MEASURES

FOR BUSINESS OPERATION DURING THE CRISIS

In order to contain the risk of infection and maintain the business activities, there are some alternatives that may be implemented by companies, such as:

- **Home office:** The remote work during the crisis may be used as an alternative in positions that do not need to be performed in person. Therefore, it is recommended the adoption of some precautions, such as the signing of an additional deed to the employment contract that deals with the rules for the provision of services remotely and regulates the company's responsibility for any employee expenses (Internet, electric power, laptop, telephone, among others). Under normal circumstances, this change in the work regime would depend on mutual consent, however, due to the current situation, we understand that this change may be imposed by the employer.

The same care observed by the employee in on-site work should be taken at home, including the rules of confidentiality. However, when the alternative does not apply to a certain position, the company will need to take it together with other measures.

- **Employee rotation system:** Especially indicated for activities that cannot be carried out from home, the employee rotation, through the elaboration of work schedules, reduces the displacement of people and agglomeration in the working environment, allowing the authorities' recommendations to be minimally respected. In addition, changes in employees' working hours, with flexible beginning and end times, may be adopted.

- **Paid leave:** In this case, specifically, the employee will not work, but must continue receiving his/her salary normally for all legal purposes, including for the calculation of time of service, Christmas bonus and vacation, in addition to the FGTS deposits. When the company returns to normal, nothing may be required from the employee. However, if the paid leave enjoyed by the employee lasts for more than 30 uninterrupted days, the employee will lose the right to vacation, and a new acquisition period will begin.
- **Collective or individual vacation:** In the event of vacations, individual or collective, the legislation currently provides In the case of holidays, individual or collective, the legislation currently provides for the need to communicate the employee at least 48 hours in advance, and there is no longer a requirement to communicate the authorities and the union.
- **Bank of hours:** An option for all employees submitted to time control, in this alternative the hours not worked as of the suspension of activities are registered in the bank of hours and may be required later (in the form of overtime) when the company's activities returns to normal. This modality may be agreed upon individually, if the compensation of hours lasts up to 6 months. For a period longer than that, it is necessary an agreement with the workers' union.

- **Proportional reduction of hours and salary:** Through individual or collective agreement, it is possible to reduce the working hours of employees, with a proportional reduction in wages, for a maximum period of 90 days. In this modality, in addition to preserving the employee's hourly wage, a provisional guarantee of employment may be established for the period during which the salary reduction lasts and for an equivalent period after the re-establishment of the normal working day.

In summary, the possibility of reducing the working hours and salary works as follows:

POSSIBILITY OF REDUCING THE WORKING HOURS AND SALARY

ORIGINAL SALARY AMOUNT	25% reduction (Employee shall be paid with 25% of the unemployment compensation amount)	50% reduction (Employee shall be paid with 50% of the unemployment compensation amount)	70% reduction (Employee shall be paid with 70% of the unemployment compensation amount)
Up to BRL 3,135.00	Individual or collective agreement	Individual or collective agreement	Individual or collective agreement
From BRL 3,135.00 to BRL 12,202.12	Individual or collective agreement	Collective agreement only	Collective agreement only
Over BRL 12,202.12 with a higher education degree	Individual or collective agreement	Individual or collective agreement	Individual or collective agreement

- **Suspension of employment contracts:** For a period of 60 days, it is possible to suspend the employment contract, by means of an individual written agreement. During the period, the employer must maintain the benefits paid, in addition to offering a provisional guarantee of employment for the duration of the suspension and for an equivalent period after the re-establishment of the employment contract.

POSSIBILITY OF SUSPENDING THE EMPLOYMENT AGREEMENT

ORIGINAL SALARY	AGREEMENT MODALITY
Up to BRL 3,135.00	Individual or collective agreement
From BRL 3,135.00 to BRL 12,202.12	Collective agreement only
Over BRL 12,202.12 with a higher education degree	Individual or collective agreement

The benefit to be received under such modality shall be funded as follows:

	PAYMENT OF MONTHLY COMPENSATION ALLOWANCE BY THE COMPANY	AMOUNT OF THE BENEFIT PAID BY THE GOVERNMENT
Companies with annual gross revenue over BRL 4.8 million	Mandatory, 30% of the employee's salary	70% of the unemployment compensation amount
Companies with annual gross revenue under BRL 4.8 million	Optional	100% of the unemployment compensation amount to which the employee is entitled

The chosen contingency plan should be the one that best suits the reality of each company, and it is not necessary to implement a general rule for all workers. Thus, each department may proceed in a specific way.

However, to avoid allegations of discriminatory treatment, it is advisable that the measures to change the working routine be adopted based on objective and similar criteria, taking into consideration the activities of each employee and the risk factors inherent to each worker.

POLICIES

FOR DEALING WITH CORONAVIRUS

Considering that this is a global epidemic, there are several doubts on how to treat employees with suspicion or risk of infection. The same happens regarding the posture to be adopted in case of confirmation of infection by Covid-19. We listed below some of the main points related to the topic.

- **Workers with suspicion or risk of contamination:** The risk of contamination must be analyzed on a case-by-case basis and take into account numerous factors, such as:
 1. Travel to risk areas;
 2. Contact with infected person;
 3. Personal condition of vulnerability (age, pregnancy, chronic disease, etc.);
 4. Appearance of some symptoms similar to Coronavirus (hypothesis in which the government has been indicating isolation).

Thus, in suspicious cases, even if there is no legal obligation, the company may adopt a policy of immediately taking this employee out of the working environment, since his/her permanence represents a risk to him/herself and the rest of the employees, as well as other citizens who were in contact with him/her. This is a preventive measure that may avoid future attempts to hold the company liable for contamination in the working environment. During the leave, the person may work remotely, in a home office regime, or, if his/her position does not allow it, just remain on paid leave.

- **Workers with Coronavirus:** The absence from work due to Coronavirus is equivalent to any other absence due to common illness. That is, the person presents a medical certificate and the first 15 days are borne by the employer, and the rest will be paid by INSS through the sickness benefit. It is not advisable to issue a CAT if the employee has Coronavirus, even if there is suspicion that the contamination occurred during the working activities.
- It is important to clarify that the early removal of employees who are at risk or suspected of being contaminated, but have no symptoms, is a prevention measure that does not require a certificate and is taken by exclusive decision of the employer, in order to protect the public health. Therefore, the preventive removal should not be confused with the medical license, provided to employees who have the Coronavirus or who present a certificate, bearing in mind that, in case of leave by initiative of the employer, the company will pay the employee's salary for the period in which he/she is on leave.

EMPLOYER'S RIGHTS AND DUTIES

DURING THE CRISIS

Although Covid-19 does not occur in the working environment, contagion may occur anywhere. Therefore, much has been asked about the possibility of employer liability, as well as what would be the rights of the company during the crisis period. On this subject, we highlight the following main points:

- **The employee is entitled to justified absence upon medical or governmental certificate or recommendation:** If there is no medical document or internal policy that justifies the employee's removal from his/her working activities, the employer has the right to demand the employee's presence in the working environment. Thus, even if public transportation is reduced, schools are closed and the employee belongs to the risk group, the worker cannot simply refuse to attend work, and these absences may be considered as unjustified absences. On the other hand, undiagnosed workers who, by government act, are indicated to the quarantine or isolation period will have the absences justified.
- **The employer has the duty to take steps to minimize the damage caused by Coronavirus:** Although it is not an occupational disease, contamination may occur during work, which is why it is recommended that employers take maximum precautions to prevent the spread of the disease.

In this context, negligence in providing a safe working environment due to lack of care by the company opens up the possibility of liability, as ignoring government recommendations increases the natural risk of contamination. As a result, the company now shares responsibility for the spread of the virus.

Also in this context, considering the duty to monitor the working environment, employees who refuse to comply with prevention and containment measures may be punished with disciplinary measures.

L.O. Baptista's [labor](#) team remains at the disposal of its clients to clarify any doubts related to this and other matters.

Also check out our [Special: The effects of the Coronavirus \(Covid-19\) on business](#), with daily updates from the perspective of several areas of law.

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