

## Presidency of the Republic

### General-Secretariat

#### Subchief for Legal Affairs

#### Provisional Measure No. 945 of 4 April 2020

It provides for temporary measures in response to the **COVID-19** pandemic in the port sector and cession of aprons under military administration.

**The PRESIDENT OF THE REPUBLIC**, in the use of the assignment that art. 62 of the Constitution gives him, adopts the following Provisional Measure with the force of law:

Art. 1 This Provisional Measure provides for:

- I - special measures in response to the **COVID-19** pandemic to ensure the preservation of port activities, considered essential; and
- II - the cession of aprons of special use under military administration.

Art. 2 Under this Provisional Measure, the Port Work Managing Body [OGMO] cannot assign for duty casual port worker on the following hypotheses:

I - when the worker presents the following symptoms, accompanied or not by fever, or other conditions outlined in the act of the federal Executive Branch, compatible with **COVID-19**:

- a) dry coughing;
- b) Sore throat; or
- c) difficulty breathing

II - when the worker is diagnosed with **COVID-19** or subjected to home isolation measures for cohabitation with a person diagnosed with the **COVID-19**;

III - when a woman is pregnant or breastfeeding;

IV - when the worker is over 60 years old; or

V - when the worker has been diagnosed with:

- a) acquired immunodeficiency;
- (b) a respiratory disease; or
- c) chronic or severe pre-existing illness, such as cardiovascular disease, respiratory or metabolic.

§ 1 the Port Work Managing Body must forward to the port authority weekly updated list of casual port workers who are prevented from being assigned for duty, accompanied by documentation proving that the workers fall into any of the hypotheses provided for in the *caput*.

§ 2 the attestation of symptoms referred to in item I of the *caput* may be performed by means of a medical report or other form established in an act of the federal Executive Branch.

§ 3 the workers that fall into any of the hypotheses provided for in the *caput* may send the documentation of their situation to the Port Work Managing Body in electronic format.

§ 4 In the cases provided for in Sections I, II and III of the *caput*, workers are obliged to immediately inform the Port Work Managing Body of any change in their situation.

Art. 3 While the impediment of work assignment persists founded in any of the hypotheses provided for in Art. 2, the casual port worker shall be entitled to receive monthly compensatory indemnity in the amount corresponding to 50 per cent on the monthly average received by him through the Port Work Managing Body between 1 October 2019 and 31 March 2020.

§1 Payment of the indemnity will be funded by the port operator or by any party that hires the services of the casual port workers through the Port Work Managing Body.

§ 2 The value paid for each port operator or service hirer, for purposes of repassing to the beneficiaries of the indemnity, will be proportional to the amount of workforce hired from the Port Work Managing Body.

§ 3 The Port Work Managing Body should calculate, collect and pass on to the beneficiaries the amount of their indemnities.

§ 4 In the hypothesis of the increased costs with the casual port work due to the compensation referred to in this article have an impact on the lease contracts already signed; these should be amended to promote the economic-financial balance.

§ 5 The port administration will grant tariff discount to pre-qualified port operators that are tenants of port facilities in an amount equivalent to the additional costs arising from the payment of the indemnity referred to in this article.

§ 6 The benefit to be paid to the casual port workers referred to in the *caput*:

I - are compensatory in nature;

II - does not integrate the basis for the calculation of the income tax withheld at source or the declaration of annual adjustment of income tax of the employee;

III - does not integrate the basis for the calculation of social security contributions and other taxes levied on the payroll;

IV - does not integrate the basis for the calculation of the amount due to the Employee's Severance Guarantee Fund - FGTS, instituted by Law no. 8,036, of 11 May 1990, and by Complementary Law no. 150 of 1 June 2015; and

V - may be excluded from net profit for determination of the income tax of the legal person and the Social Contribution on Net Profits of legal persons taxed over the real profit.

§ 7 The casual port workers shall not be entitled to the indemnity referred to in this article, even if they are unable to compete on the assignment for duty, if:

I - they are in the enjoyment of any benefit from General Social Security Scheme or own regime of social security, observing the provisions of the single paragraph of art. 124 of Law no. 8,213, of 24 July 1991; or

II - receive the care benefit deal with under art. 10 of Law no. 9,719, of 27 November 1998.

Art. 4 In the event of unavailability of casual port workers to meet the demand for work, the port operators who are not attended may freely engage workers with employment per time for completion of services of longshore duties, cooperage, lashing, stowage, tallying, and watchkeeping of vessels.

§ 1 For the provisions of this article, unavailability of port workers is any cause that results in no immediate answer to requests submitted by port operators to the Port Work Managing Body, such as strikes, movements of downtime and work-to-rule actions.

§ 2 The recruitment of port workers under a contract of employment based on the provisions of the *caput* may not exceed twelve months.

Art. 5 Law nº 9,719, of 1998, shall apply with the following changes:

"Art. 5 .....

§ 1º the Port Work Managing Body will assign casual port workers by electronic means so that the worker can enrol without attending roster station.

§ 2 the electronic medium adopted for the assignment of casual port workers shall be inviolable and technically secure.

§ 3 the presence of port workers in the roster station is forbidden."

Art. 6 Law no. 7,783, of 28 June 1989, shall expire with the following changes:

"Art. 10. ....

.....

XV - port activities."

Art. 7 Law no. 12,815, of 5 June 2013, shall apply with the following changes:

"Art. 40. ....

.....

§ 5 as long as duly qualified, casual port workers registered and enrolled may carry out any of the activities referred to in § 1, the requirement for a new record or specific registration forbidden,

regardless of settlement or collective bargaining agreement."

Art. 8 Law no. 7,565, of 19 December 1986, shall apply with the following changes:

"Art. 95. The Executive should establish and regulate a commission that has the following objectives:

I - to advise government bodies concerning the policy and security criteria; and

II - to promote coordination between:

(a) the services of control of passengers;

(b) the airport administration;

(c) the policing;

(d) the air transport companies; and

(e) the ancillary services companies.

Sole Paragraph. The commission referred to in the *caput*, is also incumbent to propose guidelines to prevent and deal with threats and acts against civil aviation and correlated installations."

Art. 9. The provisions of art. 2, art. 3 and art. 4 shall have remain in force for a period of one hundred and twenty days counted from the date of publication of this Provisional Measure.

Sole Paragraph. The established in the *caput* may be extended by an Act of the Federal Executive Power.

Art. 10. It is authorised the cession of special use aprons under military administration, royalty-free, to legal persons providing public domestic air transport service, precariously, during the period of the state of public calamity due to the **COVID-19** pandemic.

§ 1º the cession shall comprise only the use of cells of physical space, to be determined by the Air Force Command.

§ 2º the cession will be formalised by means of a term, which shall contain the conditions laid down and the purpose of their implementation and be signed by the assignee, a hypothesis that implies its consent.

§ 3 In the event of the use of the property, wholly or partially, different from that provided for in this Provisional Measure and on the terms of § 2, the cession will become void, regardless of a special act.

§ 4º the cession will not bring about charges against the Union and the activities necessary for the handling of the apron, the maintenance and the use of aircraft will be for the account of the assignee.

§ 5º the assignees shall be subject to the existing terms and conditions laid down by the Air Force Command to access the ceded areas, with a view to the security of military installations.

§ 6º The Union will not be liable for any damage caused to aircraft or third parties as a result of the cession of special use provided for in the *caput*.

§ 7º the assignee will be obliged to ensure the preservation of the property and shall be responsible for any damages or losses caused.

Art. 11. Are hereby repealed the § 1 and § 2 of art. 95 of Law no. 7,565, of 1986.

Art. 12. This Provisional Measure shall enter into force on the date of its publication.

Brasilia, on 4 April 2020; the 199<sup>th</sup> year of the Independence and the 132<sup>nd</sup> of the Republic.

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