

PROVISIONAL MEASURE 936/2020

EFFECTIVENESS OF INDIVIDUAL AGREEMENTS

STF DECISION

As widely reported in the media, on 06/04/2020, Ricardo Lewandowski, Minister of the Supreme Federal Court, partially granted the request for injunction in ADIn 6363, filed by the Rede Sustentabilidade Party. His understanding was that, for the individual agreements for proportional reduction of working hours and wages or temporary suspension of the employment contract to be considered as valid, the employees' union should be informed within 10 calendar days and should not oppose what was individually negotiated between the employer and the employee.

The Attorney General's Office (AGU) filed a Motion for Clarification against this decision. In a new decision (**rendered on 04/13/2020**), Minister Ricardo Lewandowski, even denying the aforementioned appeal, clarified that his previous decision was an interpretation of paragraph 4, article 11, of MP 936/2020, according to the 1988 Federal Constitution, so that individual agreements already concluded, as well as those that may be executed, produce immediate effects, except for any collective bargaining that may modify them (in whole or in part).

Thus, according to Minister Ricardo Lewandowski's new pronouncement:

(I) individual agreements signed pursuant to MP 936/2020 are valid, provided they are communicated to the respective unions within 10 calendar days; **(II)** the union's inaction implies its consent to the individual agreement; and **(III)** the employee may, in the future, adhere to any collective agreement or convention, which may prevail over the individual agreement, observing the principle of the most favorable rule.

ADIn 6363 was included in the trial docket of the Plenary of the Supreme Federal Court of 04/16/2020 (next Thursday), which may maintain or reform Minister Ricardo Lewandowski's decision.

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