

# STATE OF EMERGENCY - COVID 19 - WHAT YOU NEED TO KNOW

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### **1. How does the law defines State of Emergency?**

The State of Emergency is foreseen and regulated under the Constitution of the Portuguese Republic ("CRP") and Law n.º 44/86, of 30 September.

The State of Emergency is a state of exception that can be declared in cases of public calamity (arts. 19/2 of the CRP and 1/1 of Law n.º 44/86).

The declaration of the State of Emergency gives the authorities the power to take all necessary and appropriate measures for the prompt restoration of constitutional normality (art. 19/8 of the CRP).

### **2. What measures can be taken and who is legally responsible for implementing them?**

The law provides only for the limits of the measures to be implemented, giving ample scope for its specific definition (art. 2/2 of Law n.º 44/86).

In the case of a health emergency, the measures to be adopted should be particularly restrictive of citizens' mobility and freedom, which may involve quarantine and forced isolation.

The declaration of the State of Emergency is of the exclusive competence of the President of the Republic but requires the hearing of the Government and the authorisation of the Parliament. The Government is the entity legally responsible for the execution of the measures determined (art. 17 of Law n.º 44/86).

### **3. For how long can the State of Emergency be declared?**

The duration of the State of Emergency may not be for more than 15 days, without prejudice to possible renewals, of one or more periods, with the same time limit (articles 19/5 of the CRP and 5 of Law n.º 44/86).

The declaration of the State of Emergency is immediately revoked if the circumstances that required its implementation cease to exist (art. 13/1 of Law n.º 44/86EM).

#### **4. What are the implications for citizens' rights, freedoms and guarantees?**

The State of Emergency can only establish the suspension or restriction of certain rights, freedoms and guarantees (art. 19/3 of the CRP); these must be specified in the declaration of the State of Emergency (arts. 19/5 of the CRP and 9/2 of Law n.º 44/86).

Suspension of rights, freedoms and guarantees must always respect the principle of proportionality, equality and non-discrimination (art. 2/2 of Law n.º 44/86).

Citizens have the right of access to the courts to defend their rights, freedom and guarantees (art. 6 of the Law n.º 44/86).

#### **5. What are the implications for companies and workers?**

If mandatory quarantine and/or isolation measures are implemented, companies will have to implement remote working to ensure the continuity of their activities.

Companies can also consider implementing a temporary reduction of normal working hours or suspension of employment contracts (layoff), if strictly necessary to ensure the viability of the company and the maintenance of jobs.

#### **6. What happens to those who do not comply with the measures of the declaration of State of Emergency?**

Whoever fails to comply with the measures established in the declaration of the State of Emergency will be incurring a crime of disobedience (art. 348 of the Penal Code), punishable with imprisonment for up to 1 year or with a fine of up to 120 days. (art. 7 of Law n.º 44/86).

In the case of a crime of qualified disobedience, the sentences will be doubled, with a prison sentence of up to 2 years and a fine of up to 240 days.



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