



Labornet No. 1256

Integral System for Unemployment Benefits. Collective termination of employment contracts. Legal definition of "Unemployed". Guidance. Resolution No. 346/2021 by the Department of Labor.

Dear All,

We would like to inform that the reference Resolution was published in the Official Gazette of June 24, 2021, broadening the legal definition of "unemployed" for benefit eligibility purposes to include those cases where the following conditions are met in a collective layoff, even if both parties have executed a termination agreement: Employer shuts down a subsidiary, establishment, plant or business; Employees cannot decide on the continuity of the employment contract; the agreed amounts to compensate for the employment termination are similar to severance pay; the parties execute mass, homogeneous and simultaneous termination agreements.

The Recitals of this Resolution read as follows: "[...] Such agreements cannot be construed as the so-called "mutual agreement", in which case the employment contract is terminated based on "a meeting of the minds of the parties" (Section 241 of the Employment Contract Act No. 20744) (consolidated text 1976), because the aim of these agreements is not to end the relationship instead of keeping it; but rather the purpose is to establish how to terminate employment beyond employees' availability.

In case of doubt, even if the termination agreement is executed, employees are deemed to be "unemployed" for unemployment benefit eligibility purposes if two or more of the following eligibility requirements are met:

- The reason that causes or leads to the execution of termination agreements, as analyzed here, is the shutdown of a subsidiary, establishment, plant or business of the Employer.
- Employees are not in a position to decide on the continuity of their employment contract;
- The amounts set forth in the termination agreements are similar or equal to the amounts that should be paid as severance payment; or
- Termination agreements are mass, homogeneous and simultaneous involving a group of employees.

Best regards,

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